KFM
9030
1979
.A2

c.2

MONTANA
CODE
ANNOTATED

1979

CLAREN J NEAL
[redacted]

STATE LAW LIBRARY
DEC 1 4 2006
OF MONTANA

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

DIANA S. DOWLING
Code Commissioner

Staff Attorneys

H. David Cogley
Robert Clark Pyfer
Laurence Weinberg
James H. Lear
Shaun Robin Simon
Joan Helen Pauly Mayer
John A. Bobinski
Randall J. "Rock" McDonald
Robert N. Lane

Indexers

Nadine E. Geil
Jacqueline Nichols Terrell
Valeri Hanson, Index Technician

ROBERTA MOODY
Director Computer Services

Copy Editors
Doris Groot
Clarice O. Smith
Georgia Remmel Brurud

Data Entry Operators
Bonni Belden
Connie Dixon
Maurie Finstad
Margaret Liles
Martha Lowe
Marilynn Novak
Nancy Ritz
Patricia Small

Proofreaders
Phyllis Cote
Marie Fuhrmann
Mary Alice Johnson
Jane Kufeld
Andrea Merrill
Claudena Miller
Mary Ellen Randall
Carlyce Skjervem
Doug Sternberg

Data Processing Specialist
Henry Trenk

Distribution
Jean Dayton

Published by the
MONTANA LEGISLATIVE COUNCIL
Room 138, State Capitol
Helena, Montana 59601
Telephone (406) 449-3064

1979

3
Printed by
COLOR WORLD OF MONTANA, INC.
201 E. Mendenhall, Bozeman, MT 59715

Copyright
© 1978, 1979
by
The State of Montana

MONTANA CODE ANNOTATED
1979
CONTENTS

Volume 1
CONSTITUTION
GOVERNMENT-RELATED

Titles
1. General Laws and Definitions
2. State Government Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2
LOCAL GOVERNMENT

Titles
7. Local Government (Chs. 1-10)

Volume 3
LOCAL GOVERNMENT

Titles
7. Local Government (Chs. 11-35)
8 and 9. Reserved

Volume 4
GOVERNMENT-RELATED

Titles
10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved
15. Taxation)
16. Alcohol and Tobacco) Finances
17. State Finance)
18. Public Contracts

Volume 5
RETIREMENT — EDUCATION — LEISURE TIME

Titles
19. Public Retirement Systems
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports, and Gambling
24. Reserved

Volume 6
CIVIL PROCEDURE — LEGAL RELATIONSHIPS — TRADE AND COMMERCE

Titles
25. Civil Procedure
26. Evidence
27. Remedies
28. Contracts and Other Obligations
29. Reserved
30. Trade and Commerce

Volume 7
CREDIT — FINANCE — INSURANCE

Titles
31. Credit Transactions and Relationships
32. Financial Institutions
33. Insurance
34. Reserved

Volume 8
CORPORATIONS — PROFESSIONS — LABOR

Titles
35. Corporations, Partnerships, and Associations
36. Reserved
37. Professions and Occupations
38. Reserved
39. Labor

Volume 9
FAMILY — CRIME — HEALTH

Titles
40. Family Law
41. Minors
42 and 43. Reserved
44. Law Enforcement
45. Crimes
46. Criminal Procedure
47 and 48. Reserved
49. Human Rights
50. Health and Safety
51 and 52. Reserved

Volume 10
SOCIAL SERVICES — TRANSPORTATION — UTILITIES

Titles
53. Social Services and Institutions
54 - 59. Reserved
60. Highways
61. Motor Vehicles and Traffic Regulations
62 - 66. Reserved
67. Aeronautics
68. Reserved
69. Public Utilities and Carriers

Volume 11
PROPERTY — ESTATES

Titles
70. Property
71. Mortgages, Pledges, and Liens
72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved

CONTENTS

Volume 12

NATURAL RESOURCES — AGRICULTURE — LIVESTOCK

Titles
75. Environmental Protection
76. Land Resources and Use
77. State Lands
78 and 79. Reserved
80. Agriculture
81. Livestock

Volume 13

NATURAL RESOURCES — MINERALS— WATER — WILDLIFE — PLANNING

Titles
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91 - 99. Reserved
INDEX

TITLE 35

CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Ch.
1. Business Corporations.
2. Nonprofit Corporations.
3. Religious Corporations Sole.
4. Professional Service Corporations.
5. Business Trusts.
6. Involuntary Corporate Dissolution.
Chapters 7 through 9 reserved.
10. Partnerships in General.
11. Partnership — Use of Fictitious Name.
12. Limited Partnerships.
13. Mining Partnerships.
Chapter 14 reserved.
15. Cooperative Associations.
16. Agricultural Associations.
17. Cooperative Agricultural Marketing.
18. Rural Cooperative Utilities.
Chapter 19 reserved.
20. Cemetery Associations.
21. Mausoleum and Columbarium Authorities.

CHAPTER 1

BUSINESS CORPORATIONS

Part 1 — General

Section
35-1-101. Short title.
35-1-102. Definitions.
35-1-103. Applicability.
35-1-104. Application to foreign and interstate commerce.
35-1-105. Repeal of prior act not to affect rights accrued or liabilities incurred.
35-1-106. Reservation of power.
35-1-107. Permissible purposes for incorporation.
35-1-108. General powers.
35-1-109. Liability of and to ostensible corporations.
35-1-110. Defense of ultra vires.
35-1-111. Waiver of notice.

Part 2 — Formation—Articles of Incorporation—Bylaws

35-1-201. Incorporators.
35-1-202. Articles of incorporation.
35-1-203. Articles of incorporation — filing — issuance of certificate of incorporation.
35-1-204. Effect of issuance of certificate of incorporation.
35-1-205. Organization meeting of directors.
35-1-206. Power to amend articles of incorporation.
35-1-207. Procedure to amend articles of incorporation.
35-1-208. Class voting on amendments.
35-1-209. Articles of amendment — contents.
35-1-210. Filing of articles of amendment and issuance of certificate of amendment.
35-1-211. Effect of certificate of amendment.

35-1-212. Amendment of articles of incorporation in reorganization proceedings.
35-1-213. Restated articles of incorporation.
35-1-214. Bylaws — power in directors — contents.

Part 3 — Corporate Name, Registered Office and Agent, and Service of Process

35-1-301. Corporate name.
35-1-302. Reservation of corporate name.
35-1-303. Registration of corporate name.
35-1-304. Renewal of name registration.
35-1-305. Registered office and registered agent.
35-1-306. Change of registered office or registered agent.
35-1-307. Service of process upon corporation.

Part 4 — Directors and Officers

35-1-401. Board of directors.
35-1-402. Number, election, and term of directors.
35-1-403. Classification of directors and staggered terms.
35-1-404. Place and notice of directors' meetings.
35-1-405. Quorum of directors — voting requirements.
35-1-406. Action by directors without a meeting.
35-1-407. Executive and other committees.
35-1-408. Vacancies and removal of directors.
35-1-409. Liability of directors in certain cases.
35-1-410. Officers — appointment — powers and duties.
35-1-411. Removal of officers.
35-1-412. Penalty imposed upon officers and directors for signing false document.

Part 5 — Shareholders

35-1-501. Meetings of shareholders.
35-1-502. Notice of shareholders' meetings.
35-1-503. Closing of transfer books and fixing record date.
35-1-504. Voting list.
35-1-505. Quorum of shareholders — voting requirements.
35-1-506. Voting of shares.
35-1-507. Articles to control as to shareholder voting requirements.
35-1-508. Voting trust — inspection of agreement.
35-1-509. Action by shareholders without a meeting.
35-1-510. Liability of subscribers and shareholders.
35-1-511. Shareholders' preemptive rights.
35-1-512. Applicability of previous section to existing corporations.
35-1-513. Records — shareholder inspection rights.
35-1-514. Actions by shareholders.

Part 6 — Shares

35-1-601. Authorized shares.
35-1-602. Issuance of shares of preferred or special classes in series — filing of statement.
35-1-603. Subscriptions for shares — remedies on default in payment.
35-1-604. Stock assessments — delinquency sale.
35-1-605. Consideration for shares.
35-1-606. Modes of payment for shares.
35-1-607. Stock rights and options.
35-1-608. Determination of stated capital — allocation of consideration.
35-1-609. Expenses of organization, reorganization, and financing.
35-1-610. Certificates representing shares.
35-1-611. Issuance of fractional shares or scrip.
35-1-612. Right of corporation to acquire and dispose of its own shares — restrictions.
35-1-613. Disposition of stock purchased by corporation.
35-1-614. Restriction on redemption or purchase of redeemable shares.

35-1-615. Cancellation of redeemable shares by redemption or purchase.
35-1-616. Cancellation of other reacquired shares.

Part 7 — Dividends and Distributions

35-1-701. Dividends.
35-1-702. Stock split-up not a dividend.
35-1-703. Distributions from capital surplus — payment of cumulative dividends out of capital surplus.
35-1-704. Reduction of stated capital when no action requiring amendment and no cancellation of shares.
35-1-705. Special provisions relating to surplus and reserves.

Part 8 — Merger, Consolidation, and Sale of Assets

35-1-801. Procedure for merger.
35-1-802. Procedure for consolidation.
35-1-803. Approval of shareholders required.
35-1-804. Articles of merger or consolidation — contents — filing.
35-1-805. Merger of subsidiary without shareholder approval.
35-1-806. Effect of merger or consolidation.
35-1-807. Merger or consolidation of domestic and foreign corporations.
35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets.
35-1-809. Sale of assets not in regular course of business — shareholder approval.
35-1-810. Right of shareholders to dissent.
35-1-811. Dissenting shareholder's right to fair value of shares — procedure for exercise of rights.

Part 9 — Dissolution and Liquidation

35-1-901. Voluntary dissolution by incorporators — filing of articles of dissolution.
35-1-902. Voluntary dissolution by consent of shareholders — statement of intent.
35-1-903. Voluntary dissolution by act of corporation — statement of intent.
35-1-904. Filing of statement of intent to dissolve.
35-1-905. Effect of statement of intent to dissolve.
35-1-906. Procedure after filing of statement of intent to dissolve — notice to creditors — liquidation.
35-1-907. Revocation of voluntary dissolution proceedings by consent of shareholders.
35-1-908. Revocation of voluntary dissolution proceedings by act of corporation.
35-1-909. Filing of statement of revocation of voluntary dissolution proceedings.
35-1-910. Effect of statement of revocation of voluntary dissolution proceedings.
35-1-911. Articles of dissolution.
35-1-912. Filing of articles of dissolution — issuance of certificate of dissolution — effect.
Sections 35-1-913 through 35-1-920 reserved.
35-1-921. Power of court to liquidate assets and business of corporation — venue.
35-1-922. Procedure in liquidation of corporation by court.
35-1-923. Qualifications and bond of receivers.
35-1-924. Filing of claims in liquidation proceedings.
35-1-925. Discontinuance of liquidation proceedings.
35-1-926. Decree of involuntary dissolution in proceedings to liquidate.
35-1-927. Filing of decree of dissolution.
35-1-928. State tax clearance certificate.
35-1-929. Deposit of amount due certain shareholders upon voluntary or involuntary dissolution.
35-1-930. Survival of remedy after dissolution — continuance of corporate existence for certain purposes.

Part 10 — Foreign Corporations

35-1-1001. Admission of foreign corporation.
35-1-1002. Activities not to be considered transacting business.
35-1-1003. Application to corporations previously authorized to transact business in this state.
35-1-1004. Transacting business without certificate — disabilities and liabilities.

35-1-1005. Rights and duties of foreign corporation.
35-1-1006. Corporate name of foreign corporation.
35-1-1007. Change of name by foreign corporation.
35-1-1008. Application for a certificate of authority.
35-1-1009. Filing of application — issuance of certificate of authority.
35-1-1010. Effect of certificate of authority.
35-1-1011. Amended certificate of authority.
35-1-1012. Registered office and registered agent of foreign corporation.
35-1-1013. Change of registered office or registered agent of foreign corporation.
35-1-1014. Service of process on foreign corporation.
35-1-1015. Filing required for amended articles of incorporation.
35-1-1016. Filing required when foreign corporation is party to a merger.
35-1-1017. Withdrawal of foreign corporation.
35-1-1018. Filing of application for withdrawal — issuance of certificate of withdrawal — effect.
35-1-1019. Revocation of certificate of authority.
35-1-1020. Issuance of certificate of revocation — effect.

Part 11 — Annual Reports

35-1-1101. Annual report of domestic and foreign corporations.
35-1-1102. Filing of annual report of domestic and foreign corporations.
35-1-1103. Penalty for failure to file annual report.

Part 12 — Fees and Charges

35-1-1201. Fees and charges to be collected by secretary of state.
35-1-1202. Fees for filing documents and issuing certificates.
35-1-1203. Miscellaneous charges.
35-1-1204. License fees payable by domestic corporation.
35-1-1205. License fees payable by foreign corporation.

Part 13 — Secretary of State

35-1-1301. Powers of secretary of state.
35-1-1302. Secretary of state to notify corporation of expiration of existence.
35-1-1303. Forms to be prescribed by secretary of state.
35-1-1304. Appeal from secretary of state.
35-1-1305. Duty of secretary of state to certify copy of articles or amendments.
35-1-1306. Certificates and certified copies issued and filed by secretary of state as prima facie evidence of contents.

Part 1

General

35-1-101. Short title. This chapter shall be known and may be cited as the "Montana Business Corporation Act".

History: En. Sec. 1, Ch. 300, L. 1967; R.C.M. 1947, 15-2201.

35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.

(10) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.

(11) "Stated capital" means, at any particular time:

(a) the sum of the par value of all shares of the corporation having a par value that have been issued;

(b) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

(c) such amounts not included in subsections (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation for the purpose of computing fees, franchise taxes, and other charges imposed by this chapter.

(12) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(14) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

(15) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(16) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.

History: **En. Sec. 2, Ch. 300, L. 1967; amd. Sec. 1, Ch. 152, L. 1969; R.C.M. 1947, 15-2202.**

35-1-103. Applicability. (1) Every corporation existing, including foreign corporations qualified to do business in this state, on December 31, 1968, shall file an annual report with the secretary of state setting forth the information prescribed by 35-1-1101. The designation of the registered office of the corporation in this state and the address thereof and the designation of its resident agent in this state at such address contained in the first annual report of the corporation shall be in lieu of designating such office and agent in the articles of incorporation of such corporation, and such designation shall continue until changed as provided in 35-1-306.

(2) Any certificates of stock issued by existing corporations after December 31, 1968, shall conform to the requirements of 35-1-610.

(3) The provisions of this chapter are applicable to every corporation unless a special provision is made in relation thereto inconsistent with some provision of this chapter, in which case the special provision prevails.

History: **En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).**

35-1-104. Application to foreign and interstate commerce. The provisions of this chapter shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the constitution of the United States.

History **En. Sec. 137, Ch. 300, L. 1967; R.C.M. 1947, 15-22-137.**

35-1-105. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: **En. Sec. 139, Ch. 300, L. 1967; R.C.M. 1947, 15-22-139.**

35-1-106. Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

History: **En. Sec. 138, Ch. 300, L. 1967; R.C.M. 1947, 15-22-138.**

35-1-107. Permissible purposes for incorporation. Corporations may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance.

History: **En. Sec. 3, Ch. 300, L. 1967; R.C.M. 1947, 15-2203.**

35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) lend money to, guarantee the obligations of, and otherwise assist its employees and, upon the affirmative vote of the holders of a majority of the outstanding shares of the corporation which are entitled to vote for directors, lend money to, guarantee the obligations of, and otherwise assist its directors and officers, but no loans shall be made by a corporation secured by its shares;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;

(11) elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and in time of war to make donations in aid of war activities;

(14) in time of war, transact any lawful business in aid of the United States in the prosecution of the war;

(15) indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or

of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the shareholders after notice;

(16) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

(17) cease its corporate activities and surrender its corporate franchise;

(18) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 4, Ch. 300, L. 1967; R.C.M. 1947, 15-2204.

35-1-109. Liability of and to ostensible corporations. (1) All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

(2) One who assumes an obligation to an ostensible corporation as such cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

History: En. Sec. 135, Ch. 300, L. 1967; R.C.M. 1947, 15-22-135.

35-1-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it considers the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(3) in a proceeding by the secretary of state or the attorney general, as provided in chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

History: En. Sec. 6, Ch. 300, L. 1967; R.C.M. 1947, 15-2206; amd. Sec. 1, Ch. 202, L. 1979.

35-1-111. Waiver of notice. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

History: En. Sec. 133, Ch. 300, L. 1967; R.C.M. 1947, 15-22-133.

Part 2

Formation — Articles of Incorporation — Bylaws

35-1-201. Incorporators. One or more persons of legal age or a domestic or foreign corporation may act as incorporator or incorporators of a corporation by signing, acknowledging, and delivering in duplicate to the secretary of state articles of incorporation for such corporation.

History: En. Sec. 47, Ch. 300, L. 1967; R.C.M. 1947, 15-2247.

35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) the aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares or a statement that all of such shares are without par value or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class or that such shares are to be without par value;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional or treasury shares of the corporation;

(h) any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this chapter is required or permitted to be set forth in the bylaws;

(i) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(j) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(k) the name and address of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

History: En. Sec. 48, Ch. 300, L. 1967; R.C.M. 1947, 15-2248.

35-1-203. Articles of incorporation — filing — issuance of certificate of incorporation. (1) Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of incorporation to which he shall affix the other duplicate original.

(2) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

History: En. Sec. 49, Ch. 300, L. 1967; R.C.M. 1947, 15-2249.

35-1-204. Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 50, Ch. 300, L. 1967; R.C.M. 1947, 15-2250.

35-1-205. Organization meeting of directors. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least 3 days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

History: En. Sec. 51, Ch. 300, L. 1967; R.C.M. 1947, 15-2251.

35-1-206. Power to amend articles of incorporation. (1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment and if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

(2) In particular and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as to:

(a) change its corporate name;

(b) change its period of duration;

(c) change, enlarge, or diminish its corporate purposes;

(d) increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(e) increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;

(f) exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(g) change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

(h) change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;

(i) change the shares of any class, whether issued or unissued and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes;

(j) create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

(k) cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

(l) divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;

(m) authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(n) authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(o) revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

(p) grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

History: En. Sec. 52, Ch. 300, L. 1967; R.C.M. 1947, 15-2252.

35-1-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting. If the amendment shall involve an increase of authorized shares, at least 30 days' notice of the meeting for acting upon such amendment shall be given to shareholders entitled to vote at such meeting.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

History: En. Sec. 53, Ch. 300, L. 1967; R.C.M. 1947, 15-2253.

35-1-208. Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of such class;

(2) increase or decrease the par value of the shares of such class;

(3) effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

(4) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class;

(5) change the designations, preferences, limitations, or relative rights of the shares of such class;

(6) change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes;

(7) create a new class of shares having rights and preferences prior and superior to the shares of such class or increase the rights and preferences of

any class having rights and preferences prior or superior to the shares of such class;

(8) in the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

(9) limit or deny existing preemptive rights of the shares of such class;

(10) cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

History: En. Sec. 54, Ch. 300, L. 1967; R.C.M. 1947, 15-2254.

35-1-209. Articles of amendment — contents. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such articles and shall set forth:

(1) the name of the corporation;

(2) the amendment so adopted;

(3) the date of the adoption of the amendment by the shareholders;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) if such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

History: En. Sec. 55, Ch. 300, L. 1967; R.C.M. 1947, 15-2255.

35-1-210. Filing of articles of amendment and issuance of certificate of amendment. (1) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of amendment to which he shall affix the other duplicate original.

(2) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 56, Ch. 300, L. 1967; R.C.M. 1947, 15-2256.

35-1-211. Effect of certificate of amendment. (1) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

History: **En. Sec. 57, Ch. 300, L. 1967; R.C.M. 1947, 15-2257.**

35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his office;

(iii) issue a certificate of amendment to which he shall affix the other duplicate original.

(c) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

History: En. Sec. 59, Ch. 300, L. 1967; R.C.M. 1947, 15-2259.

35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected;

(f) if the restated articles of incorporation effect a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the restated articles of incorporation.

History: En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part).

35-1-214. Bylaws — power in directors — contents. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

History: En. Sec. 25, Ch. 300, L. 1967; R.C.M. 1947, 15-2225.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

35-1-301. Corporate name. The corporate name:

(1) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(2) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter.

History: En. Sec. 7, Ch. 300, L. 1967; R.C.M. 1947, 15-2207.

35-1-302. Reservation of corporate name. (1) The exclusive right to the use of a corporate name may be reserved by:

(a) any person intending to organize a corporation under this chapter;

(b) any domestic corporation intending to change its name;

(c) any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(d) any foreign corporation authorized to transact business in this state and intending to change its name;

(e) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified corporate name. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

History: **En. Sec. 8, Ch. 300, L. 1967; R.C.M. 1947, 15-2208.**

35-1-303. Registration of corporate name. (1) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter provided its corporate name is not the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or the name of any foreign corporation authorized to transact business in this state or any corporate name reserved or registered under this chapter.

(2) Such registration shall be made by:

(a) filing with the secretary of state:

(i) an application for registration, executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(ii) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations;

(b) paying to the secretary of state a registration fee in the amount of $1 for each month, or fraction thereof, between the date of filing such application and December 31 of the calendar year in which such application is filed.

(3) Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

History: **En. Sec. 9, Ch. 300, L. 1967; R.C.M. 1947, 15-2209.**

[illegible]

35-1-304. Renewal of name registration. A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of $10. A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year.

History: **En. Sec. 10, Ch. 300, L. 1967; R.C.M. 1947, 15-2210.**

35-1-305. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its place of business;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

History: **En. Sec. 11, Ch. 300, L. 1967; R.C.M. 1947, 15-2211.**

35-1-306. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof, verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed, file such statement in his office. Upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective.

(3) A registered agent of a corporation may resign as registered agent upon filing a written notice of resignation, executed in duplicate, with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be

signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: **En. Sec. 12, Ch. 300, L. 1967; amd. Sec. 10, Ch. 62, L. 1977; R.C.M. 1947, 15-2212.**

35-1-307. Service of process upon corporation. Service of process upon a corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: **En. Sec. 13, Ch. 300, L. 1967; R.C.M. 1947, 15-2213.**

Part 4

Directors and Officers

35-1-401. Board of directors. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

History: **En. Sec. 33, Ch. 300, L. 1967; R.C.M. 1947, 15-2233.**

35-1-402. Number, election, and term of directors. (1) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the initial board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

History: **En. Sec. 34, Ch. 300, L. 1967; R.C.M. 1947, 15-2234.**

35-1-403. Classification of directors and staggered terms. When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the articles of incorporation or the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting if there be two classes, or until the third succeeding annual meeting if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

History: **En. Sec. 35, Ch. 300, L. 1967; R.C.M. 1947, 15-2235.**

35-1-404. Place and notice of directors' meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

History: **En. Sec. 39, Ch. 300, L. 1967; R.C.M. 1947, 15-2239.**

35-1-405. Quorum of directors — voting requirements. (1) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws.

(2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by the articles of incorporation or the bylaws.

History: **En. Sec. 37, Ch. 300, L. 1967; R.C.M. 1947, 15-2237.**

35-1-406. Action by directors without a meeting. (1) Any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter.

History: **En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part).**

35-1-407. Executive and other committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors.

(2) No such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange, or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation.

(3) The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors or any member thereof of any responsibility imposed by law.

History: **En. Sec. 38, Ch. 300, L. 1967; R.C.M. 1947, 15-2238.**

35-1-408. Vacancies and removal of directors. (1) Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

(2) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds of the shares then entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the corporation has fewer than 100 shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part.

History: **En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969; R.C.M. 1947, 15-2236.**

35-1-409. Liability of directors in certain cases. (1) In addition to any other liabilities imposed by law upon directors of a corporation:

(a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter.

(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of or making adequate provision for all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.

(d) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation or the making of any loan secured by shares of the corporation, except as authorized by other provisions of this chapter, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(2) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified or registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(3) A director shall not be liable under subsections (1)(a), (1)(b), or (1)(c) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(4) Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

(5) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

History: **En. Sec. 42, Ch. 300, L. 1967; R.C.M. 1947, 15-2242.**

35-1-410. Officers — appointment — powers and duties. (1) The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

History: En. Sec. 44, Ch. 300, L. 1967; R.C.M. 1947, 15-2244.

35-1-411. Removal of officers. Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: En. Sec. 45, Ch. 300, L. 1967; R.C.M. 1947, 15-2245.

35-1-412. Penalty imposed upon officers and directors for signing false document. Each officer and director of a corporation, domestic or foreign, who signs any articles, statement, report, application, or other document filed with the secretary of state which is known to such officer or director to be false in any material respect shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: En. Sec. 126, Ch. 300, L. 1967; R.C.M. 1947, 15-22-126.

Part 5

Shareholders

35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(2) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-half of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: En. Sec. 26, Ch. 300, L. 1967; amd. Sec. 1, Ch. 308, L. 1969; R.C.M. 1947, 15-2226.

35-1-502. Notice of shareholders' meetings. Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

History: **En. Sec. 27, Ch. 300, L. 1967; R.C.M. 1947, 15-2227.**

35-1-503. Closing of transfer books and fixing record date. (1) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof or entitled to receive payment of any dividend or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 50 days.

(2) If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

(3) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

(4) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(5) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

History: **En. Sec. 28, Ch. 300, L. 1967; R.C.M. 1947, 15-2228.**

35-1-504. Voting list. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order with the address of and the number of shares held by each. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

(2) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(3) An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or produce and keep it open for

inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure to the extent of such damage.

History: En. Sec. 29, Ch. 300, L. 1967; R.C.M. 1947, 15-2229.

35-1-505. Quorum of shareholders — voting requirements. (1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(2) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

(3) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

(4) Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

History: (1) thru (3)En. Sec. 30, Ch. 300, L. 1967; Sec. 15-2230, R.C.M. 1947; (4)En. Sec. 136, Ch. 300, L. 1967; Sec. 15-22-136, R.C.M. 1947; R.C.M. 1947, 15-2230, 15-22-136(part).

35-1-506. Voting of shares. (1) Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Neither treasury shares nor shares of its own stock held by the corporation in a fiduciary capacity nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

(3) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy.

(4) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or to cumulate his votes

by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name.

(7) Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(9) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(10) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

History: En. Sec. 31, Ch. 300, L. 1967; R.C.M. 1947, 15-2231.

35-1-507. Articles to control as to shareholder voting requirements. Whenever with respect to any action to be taken by the shareholders of a corporation the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares or of any class or series thereof than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

History: En. Sec. 132, Ch. 300, L. 1967; R.C.M. 1947, 15-22-132.

35-1-508. Voting trust — inspection of agreement. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement.

(2) The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation and shall be subject to examination by any

holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

History: **En. Sec. 32, Ch. 300, L. 1967; R.C.M. 1947, 15-2232.**

35-1-509. Action by shareholders without a meeting. (1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter.

History: **En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part).**

35-1-510. Liability of subscribers and shareholders. (1) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

(2) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(3) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

(4) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

History: **En. Sec. 23, Ch. 300, L. 1967; R.C.M. 1947, 15-2223.**

35-1-511. Shareholders' preemptive rights. The shareholders of a corporation shall have no preemptive right to acquire unissued or treasury shares of the corporation or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation.

History: **En. Sec. 24, Ch. 300, L. 1967; R.C.M. 1947, 15-2224.**

35-1-512. Applicability of previous section to existing corporations. Corporations existing before December 31, 1968, whose original or amended articles of incorporation do not deny or limit to the present or future shareholders of any or all classes of stock any preemptive or preferential right to subscribe to any or all additional issues of stock of any or all classes or bonds, debentures, or other obligations convertible into stock shall continue to be subject to such preemptive or preferential right of their present or future shareholders unless and until the articles of incorporation are amended to deny or limit such rights.

History: **En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).**

35-1-513. Records — shareholder inspection rights. (1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors. Each corporation shall keep, at its registered office or principal place of business or at the office of its transfer agent or registrar, a record of its shareholders giving the names and addresses of all shareholders and the number and class of the shares held by each.

(2) Any person who shall have been a shareholder of record for at least 6 months immediately preceding his demand or who shall be the holder of record of at least 5% of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes, and record of shareholders and to make extracts therefrom.

(3) Any officer or agent who or a corporation which shall refuse to allow any such shareholder or his agent or attorney so to examine and make extracts from its books and records of account, minutes, and record of shareholders for any proper purpose shall be liable to such shareholder for such damages or other remedy as may be afforded him by law and for court costs and attorneys' fees incurred. It shall be a defense to any action under this section that the person suing therefor:

(a) has, within 2 years prior to the demand, sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose; or

(b) has improperly used or intends to improperly use any information secured or to be secured through the demanded inspection or any prior examination of the books and records of account or minutes or record of shareholders of such corporation or any other corporation; or

(c) was not acting and is not acting in good faith or for a proper purpose in making his demand.

(4) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

(5) Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History: En. Sec. 46, Ch. 300, L. 1967; R.C.M. 1947, 15-2246.

35-1-514. Actions by shareholders. (1) No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

(2) In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction,

upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

History: **En. Sec. 43, Ch. 300, L. 1967; R.C.M. 1947, 15-2243.**

Part 6

Shares

35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the constitution of Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be provided by resolutions of the board of directors.

History: **En. Sec. 14, Ch. 300, L. 1967; R.C.M. 1947, 15-2214.**

35-1-602. Issuance of shares of preferred or special classes in series — filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof;

(c) the date of adoption of such resolution;

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

History: En. Sec. 15, Ch. 300, L. 1967; R.C.M. 1947, 15-2215.

35-1-603. Subscriptions for shares — remedies on default in payment. (1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of 6 months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

(2) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time or in such installments and at such times as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be.

(3) In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription or of the amounts paid thereon shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

History: En. Sec. 16, Ch. 300, L. 1967; R.C.M. 1947, 15-2216.

35-1-604. Stock assessments — delinquency sale. The stock of any corporation for profit organized under the laws of this state shall not be assessable for any purpose except as expressly provided by statute and except that water companies, water users associations, irrigation companies, canal companies, ditch companies, and reservoir companies whose articles of incorporation provide for the assessment of shares may levy assessments at the times and in the amounts as may be prescribed by its articles of incorporation or if not so prescribed, then as follows:

(1) No one assessment must exceed 10% of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

(2) No assessment must be levied while any portion of a previous one remains unpaid, unless:

(a) the power of the corporation has been exercised in accordance with the provisions of this section for the purpose of collecting such previous assessment;

(b) the collection of the previous assessment has been enjoined; or

(c) the assessment falls within the provisions of 35-1-109.

(3) Every order levying an assessment must specify the amount thereof, when, to whom, and where payable. It must fix a day subsequent to the full term of publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than 30 or more than 60 days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than 15 or more than 60 days from the day the stock is declared delinquent.

(4) Upon the making of the order, the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given that at a meeting of the directors held on the (date) an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction and, unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

(5) The notice must be personally served upon each stockholder or, in lieu of personal service, must be sent within 10 days after the assessment through the mail addressed to each stockholder at his place of residence, if known, and, if not known, at the place where the principal office of the corporation is situated and be published once a week for 4 successive weeks in some newspaper of general circulation and devoted to the publication of general news at the place designated in the articles of incorporation as the principal place of business and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county if there be one and, if there be none, then in a newspaper published in an adjoining county.

(6) If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice. There is delinquent upon the following subscribed stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts.) And in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary will be sold at the (particular place) on the (date) at (the hour) of such day to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

(7) The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

(8) The notice when published in a daily paper must be published for 10 days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for 2 weeks previous to the day of sale. The first publication of all delinquent sales must be at least 15 days prior to the day of sale.

(9) By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

(10) On the day, at the place, and at the time appointed in the notice of sale, the secretary must unless otherwise ordered by the board of directors sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale. If payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

(11) The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

(12) If at the sale of stock no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof at the amount of the assessments, costs, and charges due, and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable nor must any dividends be declared thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

(13) The dates fixed in any notice of assessment or notice of delinquent sale published according to the provisions hereof may be extended from time to time for not more than 30 days by order of the directors entered on the records of the corporation, but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

(14) No assessment is invalidated by a failure to make publication of the notices provided for or by the nonperformance of any act required in order to enforce the payment of the same, but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void and publication must begin anew.

(15) No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity or defect of the notice of sale or defect or irregularity in the sale unless the party seeking to maintain such action first pays or tenders to the corporation or the party holding the stock sold the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid, and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within 6 months after such sale was made.

(16) The publication of notice required by this section must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published, and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

(17) On the day specified for declaring the stock delinquent or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments or any part or portion thereof and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred or any part or portion thereof.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part), (1) thru (12), (14) thru (18).

35-1-605. Consideration for shares. (1) Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(2) Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares by a vote of the holders of a majority of all shares entitled to vote thereon.

(3) Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

(4) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

(5) In the event of a conversion of shares or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be:

(a) the stated capital then represented by the shares so exchanged or converted;

(b) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and

(c) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

History: En. Sec. 17, Ch. 300, L. 1967; R.C.M. 1947, 15-2217.

35-1-606. Modes of payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part).

35-1-607. Stock rights and options. (1) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option.

(2) If such rights or options are to be issued to directors, officers, or employees as such of the corporation or of any subsidiary thereof and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders and set forth or incorporated by reference in the instrument evidencing each such right or option.

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part).

35-1-608. Determination of stated capital — allocation of consideration. (1) In case of the issuance by a corporation of shares having par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

(2) In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of 60 days after the

issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

(3) If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation, except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this chapter of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

(4) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

History: En. Sec. 19, Ch. 300, L. 1967; R.C.M. 1947, 15-2219.

35-1-609. Expenses of organization, reorganization, and financing. The reasonable charges and expenses of organization or reorganization of a corporation and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

History: En. Sec. 20, Ch. 300, L. 1967; R.C.M. 1947, 15-2220.

35-1-610. Certificates representing shares. (1) The shares of a corporation shall be represented by certificates signed by the president or a vice-president and the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice-president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate or shall state that the corporation will furnish to any shareholder, upon request and without charge, a full statement of:

(a) the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued; and

(b) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) that the corporation is organized under the laws of this state;

(b) the name of the person to whom issued;

(c) the number and class of shares and the designation of the series, if any, which such certificate represents;

(d) the par value of each share represented by such certificate or a statement that the shares are without par value.

(4) No certificate shall be issued for any share until such share is fully paid.

History: **En. Sec. 21, Ch. 300, L. 1967; R.C.M. 1947, 15-2221.**

35-1-611. Issuance of fractional shares or scrip. A corporation may but shall not be obliged to issue a certificate for a fractional share and by action of its board of directors may issue in lieu thereof scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may deem advisable.

History: **En. Sec. 22, Ch. 300, L. 1967; R.C.M. 1947, 15-2222.**

35-1-612. Right of corporation to acquire and dispose of its own shares — restrictions. (1) A corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least two-thirds of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

(2) To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares, the restriction shall be removed pro tanto.

(3) Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

(a) eliminating fractional shares;

(b) collecting or compromising indebtedness to the corporation;

(c) paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter;

(d) effecting, subject to the other provisions of this chapter, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

(4) No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

History: **En. Sec. 5, Ch. 300, L. 1967; R.C.M. 1947, 15-2205.**

35-1-613. Disposition of stock purchased by corporation. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation, and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit in accordance with the bylaws of the corporation or vote of a majority of all the remaining shares.

History: **En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).**

35-1-614. Restriction on redemption or purchase of redeemable shares. No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

History: **En. Sec. 60, Ch. 300, L. 1967; R.C.M. 1947, 15-2260.**

35-1-615. Cancellation of redeemable shares by redemption or purchase. (1) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(2) The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:

(a) the name of the corporation;

(b) the number of redeemable shares canceled through redemption or purchase, itemized by classes and series;

(c) the aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;

(d) the amount, expressed in dollars, of the stated capital of the corporation after giving effect of such cancellation;

(e) if the articles of incorporation provide that the canceled shares shall not be reissued, the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(4) Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

History: **En. Sec. 61, Ch. 300, L. 1967; R.C.M. 1947, 15-2261.**

35-1-616. Cancellation of other reacquired shares. (1) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in this section.

(2) The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:

(a) the name of the corporation;

(b) the number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption;

(c) the aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;

(d) the amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(4) Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

History: **En. Sec. 62, Ch. 300, L. 1967; R.C.M. 1947, 15-2262.**

Part 7

Dividends and Distributions

35-1-701. Dividends. The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation or out of the unreserved and unrestricted net earnings of the current fiscal year and the next preceding fiscal year taken as a single period. However if the stated capital of the corporation shall have been diminished by depreciation in the value of its property or by losses or otherwise to an amount less than the aggregate amount of the stated capital represented by the issued and outstanding stock of all classes having a preference upon distribution of assets, such a dividend shall not be declared.

(2) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same. However, no such dividend shall be paid to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(3) Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation.

(4) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital, at the time such dividend is paid, an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend.

(b) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared and there shall be transferred to stated capital, at the time such dividend is paid, an amount of surplus equal to the aggregate stated value so fixed in respect of such shares, and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(5) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide

or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

History: **En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).**

35-1-702. Stock split-up not a dividend. A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of 35-1-701.

History: **En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).**

35-1-703. Distributions from capital surplus — payment of cumulative dividends out of capital surplus. (1) The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(a) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(c) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same, concurrently with the distribution thereof.

(2) The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

History: **En. Sec. 41, Ch. 300, L. 1967; R.C.M. 1947, 15-2241.**

35-1-704. Reduction of stated capital when no action requiring amendment and no cancellation of shares. (1) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(d) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:

(i) the name of the corporation;

(ii) a copy of the resolution of the shareholders approving such reduction and the date of its adoption;

(iii) the number of shares outstanding and the number of shares entitled to vote thereon;

(iv) the number of shares voted for and against such reduction, respectively;

(v) a statement of the manner in which such reduction is effected and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

(e) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his office;

(iii) return the other duplicate original to the corporation or its representative.

(f) Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

(2) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

History: **En. Sec. 63, Ch. 300, L. 1967; R.C.M. 1947, 15-2263.**

35-1-705. Special provisions relating to surplus and reserves. (1) The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

(2) The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

(3) A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

(4) A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter.

History: En. Sec. 64, Ch. 300, L. 1967; R.C.M. 1947, 15-2264.

Part 8

Merger, Consolidation, and Sale of Assets

35-1-801. Procedure for merger. (1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

(d) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(e) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History: En. Sec. 65, Ch. 300, L. 1967; R.C.M. 1947, 15-2265; amd. Sec. 1, Ch. 328, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 328, L. 1979, provided: "This act is effective on passage and approval." Approved March 27, 1979.

35-1-802. Procedure for consolidation. (1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(d) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(e) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History: En. Sec. 66, Ch. 300, L. 1967; R.C.M. 1947, 15-2266; amd. Sec. 2, Ch. 328, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 328, L. 1979, provided: "This act is effective on passage and approval." Approved March 27, 1979.

35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

(3) At each such meeting a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(4) After such approval by a vote of the shareholders of each corporation and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: En. Sec. 67, Ch. 300, L. 1967; R.C.M. 1947, 15-2267.

35-1-804. Articles of merger or consolidation — contents — filing. (1) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each corporation signing such articles and shall set forth:

(a) the plan of merger or the plan of consolidation;

(b) as to each corporation, the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

(c) as to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

(3) The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

History: En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part).

35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation;

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of its officers signing such articles and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) issue a certificate of merger to which he shall affix the other duplicate original.

(5) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative.

History: **En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part).**

35-1-806. Effect of merger or consolidation. (1) Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

(2) When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

History: **En. Sec. 69, Ch. 300, L. 1967; R.C.M. 1947, 15-2269.**

35-1-807. Merger or consolidation of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(i) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(iii) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

(3) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: **En. Sec. 70, Ch. 300, L. 1967; R.C.M. 1947, 15-2270.**

35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case no authorization or consent of the shareholders shall be required.

History: En. Sec. 71, Ch. 300, L. 1967; R.C.M. 1947, 15-2271.

35-1-809. Sale of assets not in regular course of business — shareholder approval. A sale, lease, exchange, or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless in its discretion may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

(5) The shareholders of a corporation may, by a vote of the holders of the number of shares required to change the articles of incorporation of such corporation at a meeting duly called upon not less than 30 days' notice, amend the articles of incorporation to give the board of directors general authority to sell, lease, exchange, or otherwise dispose of all or substantially all of the property and assets, with or without the good will, of a corporation upon such conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other

corporation, domestic or foreign, as shall be authorized by the board of directors.

History: En. Sec. 72, Ch. 300, L. 1967; amd. Sec. 1, Ch. 125, L. 1969; R.C.M. 1947, 15-2272.

35-1-810. Right of shareholders to dissent. (1) Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(a) any plan of merger or consolidation to which the corporation is a party; or

(b) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale.

(2) A shareholder may dissent as to less than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(3) The provisions of this section shall not apply to the shareholders of the surviving corporation in a merger if such corporation is on the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger or if a vote of the shareholders of such corporation is not necessary to authorize such merger.

History: En. Sec. 73, Ch. 300, L. 1967; R.C.M. 1947, 15-2273.

35-1-811. Dissenting shareholder's right to fair value of shares — procedure for exercise of rights. (1) A shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which the proposed corporate action is submitted to a vote, a written objection to the proposed corporate action. If the proposed corporate action is approved by the required vote and such shareholder does not vote in favor thereof, he may, within 10 days after the date on which the vote was taken or, in the case of a merger without shareholder vote, within 15 days after the plan of merger is mailed to him, make written demand on the corporation or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of his shares. If the proposed corporate action is effected, the corporation shall pay to the shareholder, upon surrender of the certificate or certificates representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. A shareholder failing to make demand within the prescribed period is bound by the terms of the proposed corporate action. A shareholder making such demand is thereafter entitled only to payment as provided in this section and is not entitled to vote or to exercise any other rights of a shareholder.

(2) No such demand may be withdrawn unless the corporation consents thereto. The right of a shareholder to be paid the fair value of his shares

shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:

(a) the shareholder's demand is withdrawn upon consent;

(b) the proposed corporate action is abandoned or rescinded or the shareholders revoke the authority to effect such action;

(c) in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger;

(d) no demand or petition for the determination of fair value by a court is made or filed within the time provided in this section; or

(e) a court of competent jurisdiction determines that the shareholder is not entitled to the relief provided by this section.

(3) Within 10 days after the corporate action is effected, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided and shall make a written offer to each such shareholder to pay for his shares at a specified price considered by the corporation to be the fair value thereof. The notice and offer shall be accompanied by a balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer, and a profit and loss statement of that corporation for the 12-month period ending on the date of such balance sheet.

(4) If within 30 days after the date on which the corporate action was effected, the fair value of such shares is agreed upon between the dissenting shareholder and the corporation, payment therefor shall be made within 90 days after the date on which the corporate action was effected, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest in the shares.

(5) If within such 30-day period a dissenting shareholder and the corporation do not so agree, the dissenting shareholder may, within 60 days after the date on which the corporate action was effected, make written demand on the corporation for the filing of a petition in the district court for the county in this state where the corporation's registered office is located to have the fair value of his shares determined. The corporation must file the petition within 30 days after receipt of the written demand or at its election may file the petition at any time within 60 days after the date on which the corporate action was effected. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation fails to file the petition, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action on their shares quasi in rem. Each dissenting shareholder shall be served personally or by publication as provided by the Montana Rules of Civil Procedure. The jurisdiction of the court is plenary and exclusive. All shareholders who are parties to the proceeding are entitled

to judgment against the corporation for the amount of the fair value of their shares.

(6) The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have such power and authority as is specified in the order of their appointment or in an amendment thereof. The judgment is payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing the shares. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in the shares.

(7) The judgment shall include an allowance for interest, at such rate as the court may find to be fair and equitable under all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

(8) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of the costs and expenses may be apportioned and assessed as the court considers equitable against any or all of the dissenting shareholders who are parties to the proceeding and to whom the corporation made an offer to pay for the shares if the court finds that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. The expenses include reasonable compensation for and reasonable expenses of the appraisers but do not include the fees and expenses of counsel for and experts employed by any party. However, if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court determines to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

(9) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise directs. If shares represented by a certificate on which notation has been made are transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of the shares. A transferee of such shares acquires by the transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

(10) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares, except that in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation otherwise provides.

History: **En. Sec. 74, Ch. 300, L. 1967; amd. Sec. 11, Ch. 62, L. 1977; R.C.M. 1947, 15-2274.**

Part 9

Dissolution and Liquidation

35-1-901. Voluntary dissolution by incorporators — filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time within 2 years after the date of the issuance of its certificate of incorporation in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators and verified by them and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid;

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease.

History: **En. Sec. 75, Ch. 300, L. 1967; R.C.M. 1947, 15-2275.**

35-1-902. Voluntary dissolution by consent of shareholders — statement of intent. (1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation;

(e) a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

History: **En. Sec. 76, Ch. 300, L. 1967; R.C.M. 1947, 15-2276.**

35-1-903. Voluntary dissolution by act of corporation — statement of intent. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(e) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

(f) the number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

History: **En. Sec. 77, Ch. 300, L. 1967; R.C.M. 1947, 15-2277.**

35-1-904. Filing of statement of intent to dissolve. Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

History: **En. Sec. 78, Ch. 300, L. 1967; R.C.M. 1947, 15-2278.**

35-1-905. Effect of statement of intent to dissolve. Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this chapter provided.

History: **En. Sec. 79, Ch. 300, L. 1967; R.C.M. 1947, 15-2279.**

35-1-906. Procedure after filing of statement of intent to dissolve — notice to creditors — liquidation. After the filing by the secretary of state of a statement of intent to dissolve:

(1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(2) The corporation shall proceed to:

(a) collect its assets;

(b) convey and dispose of such of its properties as are not to be distributed in kind to its shareholders;

(c) pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and

(d) after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets either in cash or in kind among its shareholders according to their respective rights and interests.

(3) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated to have the liquidation continued under the supervision of the court as provided in this chapter.

History: **En. Sec. 80, Ch. 300, L. 1967; R.C.M. 1947, 15-2280.**

35-1-907. Revocation of voluntary dissolution proceedings by consent of shareholders. (1) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(2) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings;

(e) that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

History: En. Sec. 81, Ch. 300, L. 1967; R.C.M. 1947, 15-2281.

35-1-908. Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(e) the number of shares outstanding;

(f) the number of shares voted for and against the resolution, respectively.

History: En. Sec. 82, Ch. 300, L. 1967; R.C.M. 1947, 15-2282.

35-1-909. Filing of statement of revocation of voluntary dissolution proceedings. Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) return the other duplicate original to the corporation or its representative.

History: En. Sec. 83, Ch. 300, L. 1967; R.C.M. 1947, 15-2283.

35-1-910. Effect of statement of revocation of voluntary dissolution proceedings. Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

History: En. Sec. 84, Ch. 300, L. 1967; R.C.M. 1947, 15-2284.

35-1-911. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(1) the name of the corporation;

(2) that the secretary of state has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed;

(3) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part).

35-1-912. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter.

History: En. Sec. 86, Ch. 300, L. 1967; R.C.M. 1947, 15-2286.

35-1-913 through 35-1-920 reserved.

35-1-921. Power of court to liquidate assets and business of corporation — venue. (1) The district courts shall have full power to liquidate the assets and business of a corporation:

(a) in an action by a shareholder when it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;

(ii) the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed for a period which includes at least two consecutive annual meeting dates to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(iv) the corporate assets are being misapplied or wasted;

(b) in an action by a creditor when:

(i) the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(ii) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court;

(d) when a corporation has been dissolved by the secretary of state and it is established that liquidation of its business and affairs is necessary;

(e) upon filing a verified petition and/or application by a stockholder, director, or creditor of any corporation which was dissolved under any corporation laws which were in effect prior to December 31, 1968, if such dissolved corporation has or may after December 31, 1968, be found to have any property, property rights, or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

(2) Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969; amd. Sec. 7, Ch. 455, L. 1977; R.C.M. 1947, 15-2290.

35-1-922. Procedure in liquidation of corporation by court. (1) In proceedings to liquidate the assets and business of a corporation, the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or

receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

History: En. Sec. 91, Ch. 300, L. 1967; R.C.M. 1947, 15-2291.

35-1-923. Qualifications and bond of receivers. A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

History: En. Sec. 92, Ch. 300, L. 1967; R.C.M. 1947, 15-2292.

35-1-924. Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred by order of court from participating in the distribution of the assets of the corporation.

History: En. Sec. 93, Ch. 300, L. 1967; R.C.M. 1947, 15-2293.

35-1-925. Discontinuance of liquidation proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: En. Sec. 94, Ch. 300, L. 1967; R.C.M. 1947, 15-2294.

35-1-926. Decree of involuntary dissolution in proceedings to liquidate. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. In the event the proceedings are under subsection (1)(e) of 35-1-921, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969; R.C.M. 1947, 15-2295.

35-1-927. Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

History: En. Sec. 96, Ch. 300, L. 1967; R.C.M. 1947, 15-2296.

35-1-928. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any corporation is terminated, except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with said court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 2, Ch. 202, L. 1979.

35-1-929. Deposit of amount due certain shareholders upon voluntary or involuntary dissolution. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found or who is under disability and there is no person legally competent to receive such distributive portion shall be reduced to cash and deposited with the state treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto or shall be disposed of by the state treasurer in the manner provided by law.

History: En. Sec. 97, Ch. 300, L. 1967; R.C.M. 1947, 15-2297.

35-1-930. Survival of remedy after dissolution — continuance of corporate existence for certain purposes. (1) The dissolution of a corporation either by the issuance of a certificate of dissolution by the secretary of state or by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this chapter or by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within 5 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 5 years so as to extend its period of duration.

(2) Whenever any such corporation is the owner of real or personal property or claims any interest or lien whatsoever in any real or personal property, such corporation shall continue to exist during such 5-year period for the purpose of conveying, transferring, and releasing such real or personal property or interest or lien therein, and such corporation shall continue after the expiration of such 5-year period to exist as a body corporate for the purpose of being made a party to and being sued in any action, suit, or proceeding against it involving the title to any such real or personal property or any interest therein and not otherwise. Any such action, suit, or proceeding may be instituted and maintained against any such corporation as might have been had prior to the expiration of said 5-year period. This section shall not be construed as affecting or suspending any statute of limitations applicable to any suit, action, or proceeding instituted hereunder.

(3) For the purpose of service of any process, notice, or demand within the prescribed time following such dissolution, the secretary of state shall be an agent of the dissolved corporation upon whom service may be made in the manner prescribed in the Montana Rules of Civil Procedure.

History: En. Sec. 98, Ch. 300, L. 1967; R.C.M. 1947, 15-2298.

Part 10

Foreign Corporations

35-1-1001. Admission of foreign corporation. (1) No foreign corporation may transact business in this state until it procures a certificate of authority to do so from the secretary of state.

(2) No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under this chapter is not permitted to transact.

(3) A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

History: En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(1).

35-1-1002. Activities not to be considered transacting business. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security;

(8) securing or collecting debts or enforcing any rights in property securing the same;

(9) transacting any business in interstate commerce;

(10) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

History: En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(2).

35-1-1003. Application to corporations previously authorized to transact business in this state. Foreign corporations which are duly authorized to transact business in this state on December 31, 1968, for a purpose or purposes for which a corporation might secure such authority under this chapter shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this chapter, and from December 31, 1968, such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this chapter.

History: En. Sec. 116, Ch. 300, L. 1967; R.C.M. 1947, 15-22-116.

35-1-1004. Transacting business without certificate — disabilities and liabilities. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court in this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

History: En. Sec. 117, Ch. 300, L. 1967; R.C.M. 1947, 15-22-117.

35-1-1005. Rights and duties of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities imposed on or after December 31, 1968, upon a domestic corporation of like character.

History: En. Sec. 100, Ch. 300, L. 1967; R.C.M. 1947, 15-22-100.

35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

(2) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter.

History: En. Sec. 101, Ch. 300, L. 1967; R.C.M. 1947, 15-22-101.

35-1-1007. Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state.

History: **En. Sec. 102, Ch. 300, L. 1967; R.C.M. 1947, 15-22-102.**

35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(d) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(e) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(f) the names and respective addresses of the directors and officers of the corporation;

(g) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(h) a statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(i) a statement, expressed in dollars, of the amount of stated capital of the corporation as defined in this chapter;

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application.

History: **En. Sec. 103, Ch. 300, L. 1967; R.C.M. 1947, 15-22-103.**

35-1-1009. Filing of application — issuance of certificate of authority. (1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto duly certified by manual or facsimile signature by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(c) issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969; R.C.M. 1947, 15-22-104.

35-1-1010. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

History: En. Sec. 105, Ch. 300, L. 1967; R.C.M. 1947, 15-22-105.

35-1-1011. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: En. Sec. 111, Ch. 300, L. 1967; R.C.M. 1947, 15-22-111.

35-1-1012. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its place of business in this state;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

History: En. Sec. 106, Ch. 300, L. 1967; R.C.M. 1947, 15-22-106.

35-1-1013. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address, including street and number, if any, of its then registered office;

(c) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address, including street and number, if any, of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by the corporation by its president or a vice-president and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: **En. Sec. 107, Ch. 300, L. 1967; R.C.M. 1947, 15-22-107.**

35-1-1014. Service of process on foreign corporation. Service of process upon a foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: **En. Sec. 108, Ch. 300, L. 1967; R.C.M. 1947, 15-22-108.**

35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state.

History: **En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969; R.C.M. 1947, 15-22-109.**

35-1-1016. Filing required when foreign corporation is party to a merger. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated and such corporation shall be the surviving corporation, it shall, within 60 days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: **En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969; R.C.M. 1947, 15-22-110.**

35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(2) The application for withdrawal shall be made in a form prescribed by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the application or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

History: **En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973; R.C.M. 1947, 15-22-112; amd. Sec. 3, Ch. 202, L. 1979.**

35-1-1018. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of withdrawal to which he shall affix the other duplicate original.

(2) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

History: En. Sec. 113, Ch. 300, L. 1967; R.C.M. 1947, 15-22-113.

35-1-1019. Revocation of certificate of authority. (1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) the corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees prescribed by this chapter when they have become due and payable;

(b) the corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(c) the corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter;

(d) the corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or

(e) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(a) he shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) the corporation shall fail prior to revocation to file such annual report or pay such fees or file the required statement of change of registered agent or registered office or file such articles of amendment or articles of merger or correct such misrepresentation.

History: En. Sec. 114, Ch. 300, L. 1967; R.C.M. 1947, 15-22-114.

35-1-1020. Issuance of certificate of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a certificate of revocation in duplicate;

(b) file one of such certificates in his office;

(c) mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

(2) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

History: En. Sec. 115, Ch. 300, L. 1967; R.C.M. 1947, 15-22-115.

Part 11

Annual Reports

35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(f) a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(g) a statement, expressed in dollars, of the amount of stated capital of the corporation as defined in this chapter.

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report must be in a form prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report, except as to the information required by subsection

(1)(g) which must be given as of the close of business on December 31 next preceding the date herein provided for the filing of such report. It must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer and verified by the officer executing the report, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation and verified by such receiver or trustee.

History: **En. Sec. 118, Ch. 300, L. 1967; R.C.M. 1947, 15-22-118; amd. Sec. 4, Ch. 202, L. 1979.**

35-1-1102. Filing of annual report of domestic and foreign corporations. (1) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and April 15 of each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and April 15 of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to April 15 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(2) If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections. The penalties prescribed for failure to file such report within the time provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days from the date on which it was mailed to the corporation by the secretary of state.

History: **En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971; R.C.M. 1947, 15-22-119.**

35-1-1103. Penalty for failure to file annual report. Each corporation, domestic or foreign, that has failed to file its annual report within the time required by this chapter and fails or refuses to file its annual report within 30 days after the secretary of state has mailed to the corporation at its registered office a demand that such report be filed shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: **En. Sec. 125, Ch. 300, L. 1967; R.C.M. 1947, 15-22-125.**

Part 12

Fees and Charges

35-1-1201. Fees and charges to be collected by secretary of state. The secretary of state shall charge and collect in accordance with the provisions of this chapter:

(1) fees for filing documents and issuing certificates;
(2) miscellaneous charges;
(3) license fees.

History: **En. Sec. 120, Ch. 300, L. 1967; R.C.M. 1947, 15-22-120.**

35-1-1202. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $20;

(2) filing articles of amendment and issuing a certificate of amendment, $20;

(3) filing restated articles of incorporation and issuing a restated certificate of incorporation, $20;

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $20;

(5) filing an application to reserve a corporate name, $2;

(6) filing a notice of transfer of a reserved corporate name, $2;

(7) filing a statement of change of address of registered office or change of registered agent, or both, $2;

(8) filing a statement of the establishment of a series of shares, $5;

(9) filing a statement of cancellation of shares, $5;

(10) filing a statement of reduction of stated capital, $5;

(11) filing a statement of intent to dissolve, $2;

(12) filing a statement of revocation of voluntary dissolution proceedings, $2;

(13) filing articles of dissolution and issuing a certificate of dissolution, $5;

(14) filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, $20;

(15) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, $20;

(16) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, $10;

(17) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, $20;

(18) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $5;

(19) filing an annual report, $5;

(20) filing any other statement or report, except an annual report, of a domestic or foreign corporation, $2.

History: En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969; R.C.M. 1947, 15-22-121.

35-1-1203. Miscellaneous charges. The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument, or paper relating to a corporation, 50 cents per page and $2 for the certificate and affixing the seal thereto;

(2) for furnishing any certificate not mentioned in this or the preceding section, $5.

History: En. Sec. 122, Ch. 300, L. 1967; amd. Sec. 1, Ch. 185, L. 1971; R.C.M. 1947, 15-22-122.

35-1-1204. License fees payable by domestic corporation. (1) The secretary of state shall charge and collect from each domestic corporation license fees, based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have authority to issue, at the time of:

(a) filing articles of incorporation;

(b) filing articles of amendment increasing the number of authorized shares; and

(c) filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

(2) The license fees shall be at the rate of 10 cents per share up to and including the first 1,000 authorized shares, 8 cents per share for each authorized share in excess of 1,000 shares up to and including 2,500 shares, 6 cents per share for each authorized share in excess of 2,500 shares up to and including 5,000 shares, 4 cents per share for each authorized share in excess of 5,000 shares up to and including 10,000 shares, and 2 cents per share for each authorized share in excess of 10,000 shares.

(3) For the sole purpose of computing the license fee:

(a) with respect to shares having a par value, each $100 unit of the authorized shares shall be counted as one taxable share;

(b) with respect to shares without nominal or par value, such shares shall be deemed equivalent to shares having a par value of $1 each.

(4) However, such license fee shall in no event be less than $50.

(5) The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

History: En. Sec. 123, Ch. 300, L. 1967; R.C.M. 1947, 15-22-123.

35-1-1205. License fees payable by foreign corporation. (1) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of $50 as an initial license fee.

(2) Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(a) He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares having a par value of $100 per share, in an amount equal to the stated capital of the reporting foreign corporation shown by its filed annual report.

(b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

(c) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

(3) The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within 30 days after the mailing of the notice. Failure to pay such additional license fee within said 30-day period shall render such corporation liable to the secretary of state for a penalty equal to 10% of the amount of the additional license fee, together with interest at the rate of ½ of 1% per month on the fee plus penalty until paid.

(4) Foreign corporations which entered Montana for the transaction of business prior to December 31, 1968, shall be entitled to employ within this state an amount of stated capital equal to the greatest amount employed in the state during the period of their qualification prior to December 31, 1968, without the payment of additional fees.

History: En. Sec. 124, Ch. 300, L. 1967; R.C.M. 1947, 15-22-124.

Part 13

Secretary of State

35-1-1301. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

History: En. Sec. 127, Ch. 300, L. 1967; R.C.M. 1947, 15-22-127.

35-1-1302. Secretary of state to notify corporation of expiration of existence. It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than 3 months or more than 6 months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered or certified letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

History: En. Sec. 128, Ch. 300, L. 1967; R.C.M. 1947, 15-22-128.

35-1-1303. Forms to be prescribed by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made in a form which shall be prescribed by the secretary of state.

History: En. Sec. 131, Ch. 300, L. 1967; R.C.M. 1947, 15-22-131.

35-1-1304. Appeal from secretary of state. (1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall within 10 days after the delivery thereof to him give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

(2) From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation

is or is proposed to be situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(3) If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(4) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

History: En. Sec. 129, Ch. 300, L. 1967; R.C.M. 1947, 15-22-129.

35-1-1305. Duty of secretary of state to certify copy of articles or amendments. The secretary of state shall upon request certify a copy of the articles of incorporation or the articles of incorporation as restated or any amendments to either thereof.

History: En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part).

35-1-1306. Certificates and certified copies issued and filed by secretary of state as prima facie evidence of contents. All certificates issued by the secretary of state in accordance with the provisions of this chapter and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations, which would appear from the presence or absence of documents filed in his office or the compliance or noncompliance with the provisions of this chapter, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: En. Sec. 130, Ch. 300, L. 1967; R.C.M. 1947, 15-22-130.

CHAPTER 2

NONPROFIT CORPORATIONS

Part 1 — General

Section
35-2-101. Short title.
35-2-102. Definitions.

35-2-103. Applicability.
35-2-104. Repeal of prior act not to affect rights accrued or liabilities incurred.
35-2-105. Reservation of power.
35-2-106. Permissible purposes for incorporation.
35-2-107. General powers.
35-2-108. Shares of stock and dividends prohibited.
35-2-109. Unauthorized assumption of corporate powers.
35-2-110. Defense of ultra vires.
35-2-111. Waiver of notice.
35-2-112. Federal tax laws.

Part 2 — Formation—Articles of Incorporation—Bylaws

35-2-201. Incorporators.
35-2-202. Articles of incorporation — control over bylaws.
35-2-203. Articles of incorporation — filing — issuance of certificate of incorporation.
35-2-204. Effect of issuance of certificate of incorporation.
35-2-205. Organization meeting of directors.
35-2-206. Power to amend articles of incorporation.
35-2-207. Procedure to amend articles of incorporation.
35-2-208. Articles of amendment.
35-2-209. Articles of amendment — filing — issuance of certificate of amendment — effect of issuance.
35-2-210. Restated articles of incorporation.
35-2-211. Bylaws.

Part 3 — Corporate Name, Registered Office and Agent, and Service of Process

35-2-301. Corporate name.
35-2-302. Registered office and registered agent.
35-2-303. Change of registered office or registered agent.
35-2-304. Service of process upon corporation.

Part 4 — Directors and Officers

35-2-401. Board of directors.
35-2-402. Number, election, and term of directors.
35-2-403. Place and notice of directors' meetings.
35-2-404. Quorum of directors — voting requirements.
35-2-405. Articles or bylaws to control as to voting requirements.
35-2-406. Action without a meeting.
35-2-407. Committees.
35-2-408. Vacancies in board of directors.
35-2-409. Officers.
35-2-410. Removal of officers.
35-2-411. Nonliability of directors, officers, and employees.
35-2-412. Loans to directors and officers prohibited.
35-2-413. Penalty imposed upon directors and officers for signing false document.

Part 5 — Members

35-2-501. Members — classes — nonliability.
35-2-502. Meetings of members.
35-2-503. Notice of members' meetings.
35-2-504. Quorum of members — voting requirements.
35-2-505. Articles or bylaws to control as to voting requirements.
35-2-506. Action without a meeting.
35-2-507. Voting — manner.
35-2-508. When no members to vote.
35-2-509. Records to be kept — member inspection rights.

Part 6 — Merger, Consolidation, and Sale of Assets

35-2-601. Procedure for merger — contents of plan.

35-2-602. Procedure for consolidation — contents of plan.
35-2-603. Approval of merger or consolidation.
35-2-604. Articles of merger or consolidation — filing — issuance of certificate of merger or consolidation.
35-2-605. Effect of merger or consolidation.
35-2-606. Merger or consolidation of domestic and foreign corporations.
35-2-607. Sale or other disposition of assets.

Part 7 — Dissolution and Liquidation

35-2-701. Voluntary dissolution — resolution.
35-2-702. Distribution of assets.
35-2-703. Plan of distribution.
35-2-704. Revocation of voluntary dissolution proceedings.
35-2-705. Articles of dissolution.
35-2-706. Filing of articles of dissolution — issuance of certificate of dissolution — effect.
Sections 35-2-707 through 35-2-710 reserved.
35-2-711. Power of court to liquidate assets and affairs of corporation — venue.
35-2-712. Liquidation by court — procedure — receiver — distribution of assets.
35-2-713. Qualification and bond of receivers.
35-2-714. Filing of claims in liquidation proceedings.
35-2-715. Discontinuance of liquidation proceedings.
35-2-716. Decree of involuntary dissolution in proceedings to liquidate.
35-2-717. Filing of decree of dissolution.
35-2-718. Deposit of amount due certain persons upon voluntary or involuntary dissolution.
35-2-719. Survival of remedy after dissolution.

Part 8 — Foreign Corporations

35-2-801. Admission of foreign corporation.
35-2-802. Activities not to be considered conducting affairs.
35-2-803. Conducting affairs without certificate of authority — disabilities and liabilities.
35-2-804. Rights and duties of foreign corporation.
35-2-805. Corporate name.
35-2-806. Change of name.
35-2-807. Application for certificate of authority.
35-2-808. Filing of application — issuance of certificate of authority.
35-2-809. Effect of certificate of authority.
35-2-810. Amended certificate of authority.
35-2-811. Registered office and registered agent of foreign corporation.
35-2-812. Change of registered office or registered agent of foreign corporation.
35-2-813. Service of process on foreign corporation.
35-2-814. Filing required of amended articles of incorporation.
35-2-815. Filing required when foreign corporation is party to a merger.
35-2-816. Withdrawal.
35-2-817. Filing of application for withdrawal — issuance of certificate of withdrawal — effect.
35-2-818. Revocation of certificate of authority — grounds — notice.
35-2-819. Issuance of certificate of revocation — effect.

Part 9 — Annual Reports

35-2-901. Annual report of domestic and foreign corporations.
35-2-902. Filing of annual report of domestic and foreign corporations.
35-2-903. Penalty for failure to file annual report.

Part 10 — Fees and Charges

35-2-1001. Fees for filing documents and issuing certificates.
35-2-1002. Miscellaneous charges.

Part 11 — Secretary of State

35-2-1101. Powers of secretary of state.

35-2-1102. Forms to be prescribed by secretary of state.
35-2-1103. Appeal from secretary of state.
35-2-1104. Duty of secretary of state to certify copy of articles or amendments.
35-2-1105. Certificates and certified copies as prima facie evidence.

Part 1

General

35-2-101. Short title. This chapter shall be known and may be cited as the "Montana Nonprofit Corporation Act".

History: En. Sec. 1, Ch. 198, L. 1967; R.C.M. 1947, 15-2301.

35-2-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(3) "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means one's having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute "filing" under this chapter.

History: En. Sec. 2, Ch. 198, L. 1967; R.C.M. 1947, 15-2302.

35-2-103. Applicability. (1) The provisions of this chapter relating to domestic corporations shall apply to:

(a) all corporations organized hereunder;

(b) all nonprofit corporations heretofore organized under any act hereby repealed for a purpose or purposes for which a corporation might be organized under this chapter.

(2) The provisions of this chapter relating to foreign corporations shall apply to all foreign nonprofit corporations conducting affairs in this state for

a purpose or purposes for which a corporation might be organized under this chapter.

History: En. Sec. 3, Ch. 198, L. 1967; R.C.M. 1947, 15-2303(part).

35-2-104. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 96, Ch. 198, L. 1967; R.C.M. 1947, 15-2396.

35-2-105. Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

History: En. Sec. 95, Ch. 198, L. 1967; R.C.M. 1947, 15-2395.

35-2-106. Permissible purposes for incorporation. Corporations may be organized under this chapter for any lawful purpose or purposes.

History: En. Sec. 4, Ch. 198, L. 1967; amd. Sec. 106, Ch. 349, L. 1974; amd. Sec. 24, Ch. 319, L. 1975; R.C.M. 1947, 15-2304.

35-2-107. General powers. Each corporation shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and directors and otherwise assist its employees, officers, and directors;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the members after notice;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 5, Ch. 198, L. 1967; R.C.M. 1947, 15-2305.

35-2-108. Shares of stock and dividends prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.

History: En. Sec. 26, Ch. 198, L. 1967; R.C.M. 1947, 15-2326.

35-2-109. Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: En. Sec. 94, Ch. 198, L. 1967; R.C.M. 1947, 15-2394.

35-2-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it considers the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through members in a representative suit against the officers or directors of the corporation for exceeding their authority;

(3) in a proceeding by the secretary of state or the attorney general, as provided in chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts or in any other proceeding by the attorney general.

History: En. Sec. 6, Ch. 198, L. 1967; R.C.M. 1947, 15-2306; amd. Sec. 5, Ch. 202, L. 1979.

35-2-111. Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

History: En. Sec. 92, Ch. 198, L. 1967; R.C.M. 1945, 15-2392.

35-2-112. Federal tax laws. In the absence of an express provision to the contrary in its articles of incorporation, a corporation organized at any time under this chapter, which is a private foundation as defined in section 509 of the Internal Revenue Code of 1954 as in effect on March 28, 1974, during the period it is a private foundation:

(1) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(2) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 thereof;

(3) shall not retain any excess business holdings as defined in section 4943(c) thereof;

(4) shall not make any investment in such manner as to subject it to tax under section 4944 thereof;

(5) shall not make any taxable expenditure as defined in section 4945(d) thereof.

History: En. 15-2398 by Sec. 2, Ch. 332, L. 1974; R.C.M. 1947, 15-2398.

Part 2

Formation — Articles of Incorporation — Bylaws

35-2-201. Incorporators. One or more persons may incorporate a corporation by signing and delivering articles of incorporation in duplicate to the secretary of state. But no subordinate body shall be incorporated unless such action is approved in writing by the grand, head, or national body in accordance with its applicable rules and such approval or certified copy thereof is attached to the articles of incorporation submitted to the secretary of state.

History: En. Sec. 28, Ch. 198, L. 1967; R.C.M. 1947, 15-2328.

35-2-202. Articles of incorporation — control over bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

History: En. Sec. 29, Ch. 198, L. 1967; R.C.M. 1947, 15-2329; amd. Sec. 1, Ch. 78, L. 1979.

35-2-203. Articles of incorporation — filing — issuance of certificate of incorporation. (1) Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of incorporation to which he shall affix the other duplicate original.

(2) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

History: En. Sec. 30, Ch. 198, L. 1967; R.C.M. 1947, 15-2330.

35-2-204. Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 31, Ch. 198, L. 1967; R.C.M. 1947, 15-2331.

35-2-205. Organization meeting of directors. (1) After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of incorporators for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least 3 days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

(2) A first meeting of the members may be held at the call of the directors or a majority of them upon at least 3 days' notice for such purposes as shall be stated in the notice of the meeting.

History: En. Sec. 32, Ch. 198, L. 1967; R.C.M. 1947, 15-2332.

35-2-206. Power to amend articles of incorporation. A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

History: En. Sec. 33, Ch. 198, L. 1967; R.C.M. 1947, 15-2333.

35-2-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Any number of amendments may be submitted and voted upon at any one meeting.

History: En. Sec. 34, Ch. 198, L. 1967; R.C.M. 1947, 15-2334.

35-2-208. Articles of amendment. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;
(2) the amendment so adopted;
(3) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(4) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

History: **En. Sec. 35, Ch. 198, L. 1967; R.C.M. 1947, 15-2335.**

35-2-209. Articles of amendment — filing — issuance of certificate of amendment — effect of issuance. (1) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of amendment to which he shall affix the other duplicate original.

(2) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(3) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(4) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending action to which such corporation shall be a party or the existing rights of persons other than members. In the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

History: **En. Sec. 36, Ch. 198, L. 1967; R.C.M. 1947, 15-2336.**

35-2-210. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or members. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation;

(b) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the members, but if there are no members or no members entitled to vote thereon, that the restated articles were adopted at a meeting of the board of directors upon receiving an affirmative vote of a majority of the directors in office;

(c) that the restated articles correctly set forth the provisions of the articles of incorporation as theretofore amended and that they have been duly adopted as required by law.

History: En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part); amd. Sec. 2, Ch. 78, L. 1979.

35-2-211. Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

History: En. Sec. 12, Ch. 198, L. 1967; R.C.M. 1947, 15-2312.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

35-2-301. Corporate name. (1) The corporate name:

(a) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(b) shall not be the same as or deceptively similar to the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(c) shall be transliterated into letters of the English alphabet, if it is not in English.

(2) The exclusive right to the use of a corporate name may be reserved by filing in the office of the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be assigned by filing in the office of the secretary of state a notice of such assignment, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

History: En. Sec. 7, Ch. 198, L. 1967; R.C.M. 1947, 15-2307.

35-2-302. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its principal office;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office.

History: En. Sec. 8, Ch. 198, L. 1967; R.C.M. 1947, 15-2308.

35-2-303. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office be changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by the corporation by its president or a vice-president and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of

state, who shall forthwith mail a copy thereof to the corporation in care of an officer who is not the resigning registered agent at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: **En. Sec. 9, Ch. 198, L. 1967; R.C.M. 1947, 15-2309.**

35-2-304. Service of process upon corporation. Service of process upon a corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: **En. Sec. 10, Ch. 198, L. 1967; R.C.M. 1947, 15-2310.**

Part 4

Directors and Officers

35-2-401. Board of directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

History: **En. Sec. 17, Ch. 198, L. 1967; R.C.M. 1947, 15-2317.**

35-2-402. Number, election, and term of directors. (1) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. If a corporation has no members or its members have no right to vote, the directors shall be elected or appointed by the incumbent directors or by the dignitary, officer, or representative body of any organization or society designated in the articles of incorporation or bylaws.

(3) In the absence of a provision fixing the term of office, the term of office of a director shall be 1 year. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

(4) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

History: **En. Sec. 18, Ch. 198, L. 1967; R.C.M. 1947, 15-2318.**

35-2-403. Place and notice of directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

History: **En. Sec. 22, Ch. 198, L. 1967; R.C.M. 1947, 15-2322.**

35-2-404. Quorum of directors — voting requirements. (1) A majority of the number of directors fixed by the bylaws or, in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless otherwise provided in the articles of incorporation or the bylaws, but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated.

(2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by this chapter, the articles of incorporation, or the bylaws.

History: **En. Sec. 20, Ch. 198, L. 1967; R.C.M. 1947, 15-2320.**

35-2-405. Articles or bylaws to control as to voting requirements. Whenever, with respect to any action to be taken by the directors of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors than required by this chapter, the provisions of the articles of incorporation or bylaws shall control.

History: **En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).**

35-2-406. Action without a meeting. (1) Any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: **En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).**

35-2-407. Committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to:

(a) amending, altering, or repealing the bylaws;

(b) electing, appointing, or removing any member of any such committee or any director or officer of the corporation;

(c) amending the articles of incorporation, restating articles of incorporation, adopting a plan of merger, or adopting a plan of consolidation with another corporation;

(d) authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation;

(e) authorizing the voluntary dissolution of the corporation or revoking proceedings therefor;

(f) adopting a plan for the distribution of the assets of the corporation; or

(g) amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

(2) The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility imposed upon it or him by law.

History: En. Sec. 21, Ch. 198, L. 1967; R.C.M. 1947, 15-2321.

35-2-408. Vacancies in board of directors. (1) Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

(2) A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

(3) Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

History: En. Sec. 19, Ch. 198, L. 1967; R.C.M. 1947, 15-2319.

35-2-409. Officers. (1) The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms, not exceeding 3 years, as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(2) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(3) The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

History: **En. Sec. 23, Ch. 198, L. 1967; R.C.M. 1947, 15-2323.**

35-2-410. Removal of officers. Any officer or agent may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer or agent shall be without prejudice to the contract rights, if any, of the officer or agent so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: **En. Sec. 24, Ch. 198, L. 1967; R.C.M. 1947, 15-2324.**

35-2-411. Nonliability of directors, officers, and employees. The directors, officers, and employees of the corporation shall not, as such, be liable on its obligations.

History: **En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).**

35-2-412. Loans to directors and officers prohibited. No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

History: **En. Sec. 27, Ch. 198, L. 1967; R.C.M. 1947, 15-2327.**

35-2-413. Penalty imposed upon directors and officers for signing false document. Each director and officer of a corporation, domestic or foreign, who signs any articles, statement, report, application, or other document filed with the secretary of state which is known to such officer or director to be false in any material respect shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: **En. Sec. 86, Ch. 198, L. 1967; R.C.M. 1947, 15-2386.**

Part 5

Members

35-2-501. Members — classes — nonliability. (1) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws.

(2) A corporation may issue certificates evidencing membership therein.

(3) The members of the corporation shall not, as such, be liable on its obligations.

History: **En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).**

35-2-502. Meetings of members. (1) Meetings of members may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

(2) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

History: **En. Sec. 13, Ch. 198, L. 1967; R.C.M. 1947, 15-2313.**

35-2-503. Notice of members' meetings. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

History: **En. Sec. 14, Ch. 198, L. 1967; R.C.M. 1947, 15-2314.**

35-2-504. Quorum of members — voting requirements. (1) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum.

(2) A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by this chapter, the articles of incorporation, or the bylaws.

(3) Unless otherwise provided by the articles of incorporation or bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(4) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is

present, when any business may be transacted that may have been transacted at the meeting as originally called.

History: **En. Sec. 16, Ch. 198, L. 1967; R.C.M. 1947, 15-2316.**

35-2-505. Articles or bylaws to control as to voting requirements. Whenever, with respect to any action to be taken by the members of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the members than required by this chapter, the provisions of the articles of incorporation or bylaws shall control.

History: **En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).**

35-2-506. Action without a meeting. (1) Any action required by this chapter to be taken at a meeting of the members of a corporation or any action which may be taken at a meeting of the members may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: **En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).**

35-2-507. Voting — manner. (1) The right of the members or any class or classes of members to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, is entitled to one vote on each matter submitted to a vote of members.

(2) A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy is valid after 11 months from the date of its execution unless otherwise provided in the proxy. Whenever directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(3) The articles of incorporation or the bylaws may provide that in all elections for directors, every member entitled to vote has the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or to distribute such votes on the same principle among any number of such candidates.

History: **En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part); amd. Sec. 6, Ch. 202, L. 1979.**

35-2-508. When no members to vote. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

History: **En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part).**

35-2-509. Records to be kept — member inspection rights. (1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors. Each corporation shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote.

(2) All books and records of a corporation may be inspected by any member or his agent or attorney for any proper purpose at any reasonable time.

History: En. Sec. 25, Ch. 198, L. 1967; R.C.M. 1947, 15-2325.

Part 6

Merger, Consolidation, and Sale of Assets

35-2-601. Procedure for merger — contents of plan. (1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of merger setting forth:

(a) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History: En. Sec. 38, Ch. 198, L. 1967; R.C.M. 1947, 15-2338.

35-2-602. Procedure for consolidation — contents of plan. (1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(d) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History: En. Sec. 39, Ch. 198, L. 1967; R.C.M. 1947, 15-2339.

35-2-603. Approval of merger or consolidation. (1) A plan of merger or consolidation shall be adopted in the following manner:

(a) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(b) If any merging or consolidating corporation has no members or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) After such approval and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: **En. Sec. 40, Ch. 198, L. 1967; R.C.M. 1947, 15-2340.**

35-2-604. Articles of merger or consolidation — filing — issuance of certificate of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger or the plan of consolidation;

(b) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:

(i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) if any merging or consolidating corporation has no members or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that such plan received the vote of a majority of the directors in office.

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

(3) The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

History: **En. Sec. 41, Ch. 298, L. 1967; R.C.M. 1947, 15-2341.**

35-2-605. Effect of merger or consolidation. Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected. When such merger or consolidation has been effected:

(1) The several corporations, parties to the plan of merger or consolidation, shall be a single corporation which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations and all property, real, personal, and mixed, and all debts due on whatever account and all other choses in action and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

History: **En. Sec. 42, Ch. 198, L. 1967; R.C.M. 1947, 15-2342.**

35-2-606. Merger or consolidation of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this state, and in every case it shall file with the secretary of state of this state:

(i) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding.

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the other state provide otherwise.

(3) After approval by the members or, if there be no members entitled to vote thereon, by the board of directors and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: En. Sec. 43, Ch. 198, L. 1967; R.C.M. 1947, 15-2343.

35-2-607. Sale or other disposition of assets. A sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of the corporation shall be given to each member entitled to vote at such meeting within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix or may authorize the board of directors to fix any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) If there are no members or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

History: En. Sec. 44, Ch. 198, L. 1967; R.C.M. 1947, 15-2344.

Part 7

Dissolution and Liquidation

35-2-701. Voluntary dissolution — resolution. A corporation may dissolve and wind up its affairs in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If there are no members or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Upon the adoption of such resolution by the members or by the board of directors if there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except insofar as may be necessary for the conclusion thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

History: En. Sec. 45, Ch. 198, L. 1967; R.C.M. 1947, 15-2345.

35-2-702. Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid and discharged or adequate provision shall be made therefor.

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance which condition occurs by reason of the dissolution shall be returned, transferred, or conveyed in accordance with such requirements.

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation pursuant to a plan of distribution adopted as provided in this chapter.

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members or provide for distribution to others.

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter.

History: **En. Sec. 46, Ch. 198, L. 1967; R.C.M. 1947, 15-2346.**

35-2-703. Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If there are no members or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

History: **En. Sec. 47, Ch. 198, L. 1967; R.C.M. 1947, 15-2347.**

35-2-704. Revocation of voluntary dissolution proceedings. (1) A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Upon the adoption of such resolution by the members or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs.

History: **En. Sec. 48, Ch. 198, L. 1967; R.C.M. 1947, 15-2348.**

35-2-705. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation shall have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, which statement shall set forth:

(1) the name of the corporation;

(2) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(3) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(4) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(5) a copy of the plan of distribution, if any, as adopted by the corporation or a statement that no plan was so adopted;

(6) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter;

(7) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

History: **En. Sec. 49, Ch. 198, L. 1967; R.C.M. 1947, 15-2349.**

35-2-706. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be

returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this chapter.

History: En. Sec. 50, Ch. 198, L. 1967; R.C.M. 1947, 15-2350.

35-2-707 through 35-2-710 reserved.

35-2-711. Power of court to liquidate assets and affairs of corporation — venue. (1) Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) in an action by a member or director when it is made to appear:

(i) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof and either that the members are unable to break the deadlock or there are no members having voting rights;

(ii) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(iii) that the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least 2 years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(iv) that the corporate assets are being misapplied or wasted; or

(v) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor:

(i) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(ii) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when a corporation has been dissolved by the secretary of state and it is established that liquidation of its affairs is necessary;

(e) upon filing a verified petition and/or application by a member, director, or creditor of any corporation which was dissolved under any corporation laws which were in effect prior to December 31, 1968, if such dissolved corporation has or may after December 31, 1968, be found to have any property, property rights, or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

(2) Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969; amd. Sec. 8, Ch. 455, L. 1977; R.C.M. 1947, 15-2354.

35-2-712. Liquidation by court — procedure — receiver — distribution of assets. (1) In proceedings to liquidate the assets and affairs of a corporation, the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated and carry on the affairs of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct.

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members or any class or classes of members or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter or where no plan of distribution has been adopted, as the court may direct.

(4) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(5) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

History: **En. Sec. 55, Ch. 198, L. 1967; R.C.M. 1947, 15-2355.**

35-2-713. Qualification and bond of receivers. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

History: En. Sec. 56, Ch. 198, L. 1967; R.C.M. 1947, 15-2356.

35-2-714. Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred by order of court from participating in the distribution of the assets of the corporation.

History: En. Sec. 57, Ch. 198, L. 1967; R.C.M. 1947, 15-2357.

35-2-715. Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: En. Sec. 58, Ch. 198, L. 1967; R.C.M. 1947, 15-2358.

35-2-716. Decree of involuntary dissolution in proceedings to liquidate. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. In the event the proceedings are under 35-2-711(1)(e), the court shall make an order and decree of final distribution and liquidation discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

History: En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969; R.C.M. 1947, 15-2359.

35-2-717. Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

History: En. Sec. 60, Ch. 198, L. 1967; R.C.M. 1947, 15-2360.

35-2-718. Deposit of amount due certain persons upon voluntary or involuntary dissolution. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found or who is under disability and there is no person legally competent to receive such distributive portion shall be reduced to cash and deposited with the state treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the state treasurer of his right thereto or shall be disposed of by the state treasurer in the manner provided by law.

History: En. Sec. 61, Ch. 198, L. 1967; R.C.M. 1947, 15-2361.

35-2-719. Survival of remedy after dissolution. The dissolution of a corporation either by the issuance of a certificate of dissolution by the secretary of state or by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter or by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within 5 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 5 years so as to extend its period of duration.

History: En. Sec. 62, Ch. 198, L. 1967; R.C.M. 1947, 15-2362.

Part 8

Foreign Corporations

35-2-801. Admission of foreign corporation. (1) No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state.

(2) No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is prohibited from conducting.

(3) A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

History: En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-802. Activities not to be considered conducting affairs. Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) creating evidences of debt, mortgages, or liens on real or personal property;

(5) securing or collecting debts due to it or enforcing any rights in property securing the same;

(6) conducting its affairs in interstate commerce;

(7) granting funds;

(8) distributing information to its members;

(9) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

History: **En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).**

35-2-803. Conducting affairs without certificate of authority — disabilities and liabilities. (1) No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this state until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which conducts affairs in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all interest and penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

History: **En. Sec. 80, Ch. 198, L. 1967; R.C.M. 1947, 15-2380.**

35-2-804. Rights and duties of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities imposed on or after December 31, 1968, upon a domestic corporation of like character.

History: **En. Sec. 64, Ch. 198, L. 1967; R.C.M. 1947, 15-2364.**

35-2-805. Corporate name. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(2) shall not be the same as or deceptively similar to the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(3) shall be transliterated into letters of the English alphabet, if it is not in English.

History: **En. Sec. 65, Ch. 198, L. 1967; R.C.M. 1947, 15-2365.**

35-2-806. Change of name. Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state.

History: **En. Sec. 66, Ch. 198, L. 1967; R.C.M. 1947, 15-2366.**

35-2-807. Application for certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(d) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(e) the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state;

(f) the names and respective addresses of the directors and officers of the corporation;

(g) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary.

History: **En. Sec. 67, Ch. 198, L. 1967; R.C.M. 1947, 15-2367.**

35-2-808. Filing of application — issuance of certificate of authority. (1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(c) issue a certificate of authority to conduct affairs in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: **En. Sec. 68, Ch. 198, L. 1967; R.C.M. 1947, 15-2368.**

35-2-809. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

History: **En. Sec. 69, Ch. 198, L. 1967; R.C.M. 1947, 15-2369.**

35-2-810. Amended certificate of authority. (1) A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: **En. Sec. 75, Ch. 198, L. 1967; R.C.M. 1947, 15-2375.**

35-2-811. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its principal office;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office.

History: **En. Sec. 70, Ch. 198, L. 1967; R.C.M. 1947, 15-2370.**

35-2-812. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office be changed, the address to which the registered office is to be changed;

(d) the name of its registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by the corporation by its president or a vice-president and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state who shall forthwith mail a copy thereof to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated as shown by its most recent annual report. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: **En. Sec. 71, Ch. 198, L. 1967; R.C.M. 1947, 15-2371.**

35-2-813. Service of process on foreign corporation. Service of process on foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: **En. Sec. 72, Ch. 198, L. 1967; R.C.M. 1947, 15-2372.**

35-2-814. Filing required of amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in this state or authorize such corporation to conduct affairs in this state under any other name than the name set forth in its certificate of authority.

History: **En. Sec. 73, Ch. 198, L. 1967; R.C.M. 1947, 15-2373.**

35-2-815. Filing required when foreign corporation is party to a merger. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated and such corporation shall be the surviving corporation, it shall, within 60 days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

History: **En. Sec. 74, Ch. 198, L. 1967; R.C.M. 1947, 15-2374.**

35-2-816. Withdrawal. (1) A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not conducting affairs in this state;

(c) that the corporation surrenders its authority to conduct affairs in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

(2) The application for withdrawal shall be made on forms prescribed by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

History: **En. Sec. 76, Ch. 198, L. 1967; R.C.M. 1947, 15-2376.**

35-2-817. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of withdrawal to which he shall affix the other duplicate original.

(2) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease.

History: En. Sec. 77, Ch. 198, L. 1967; R.C.M. 1947, 15-2377.

35-2-818. Revocation of certificate of authority — grounds — notice. (1) The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) the corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable;

(b) the corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(c) the corporation has failed, after change of its registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter;

(d) the corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter;

(e) the certificate of authority of the corporation was procured through fraud practiced upon the state;

(f) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(g) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(a) he shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) the corporation shall fail prior to revocation to file such annual report or pay such fees or penalties or file the required statement of change of registered agent or file such articles of amendment or articles of merger or correct such misrepresentation.

History: En. Sec. 78, Ch. 198, L. 1967; R.C.M. 1947, 15-2378.

35-2-819. Issuance of certificate of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a certificate of revocation in duplicate;

(b) file one of such certificates in his office;

(c) mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

(2) Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in this state shall cease.

History: En. Sec. 79, Ch. 198, L. 1967; R.C.M. 1947, 15-2379.

Part 9

Annual Reports

35-2-901. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to conduct affairs in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the affairs which the corporation is actually conducting or, in the case of a foreign corporation, which the corporation is actually conducting in this state;

(d) the names and respective addresses of the directors and officers of the corporation.

(2) Such annual report shall be made on forms prescribed by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

History: En. Sec. 81, Ch. 198, L. 1967; R.C.M. 1947, 15-2381.

35-2-902. Filing of annual report of domestic and foreign corporations. (1) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and April 15 of each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and April 15 of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to April 15 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(2) If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties prescribed for failure to

file such report within the time provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days from the date on which it was mailed to the corporation by the secretary of state.

History: **En. Sec. 82, Ch. 198, L. 1967; R.C.M. 1947, 15-2382; amd. Sec. 3, Ch. 78, L. 1979.**

35-2-903. Penalty for failure to file annual report. Each corporation, domestic or foreign, that has failed to file its annual report within the time required by this chapter and fails or refuses to file its annual report within 30 days after the secretary of state has mailed to the corporation at its registered office a demand that such report be filed shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: **En. Sec. 85, Ch. 198, L. 1967; R.C.M. 1947, 15-2385.**

Part 10

Fees and Charges

35-2-1001. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $20;

(2) filing articles of amendment and issuing a certificate of amendment, $20;

(3) filing restated articles of incorporation and issuing restated certificate of incorporation, $20;

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $20;

(5) filing an application to reserve a corporate name, $2;

(6) filing a notice of transfer of a reserved corporate name, $2;

(7) filing a statement of change of address of registered office or change of registered agent, or both, $2;

(8) filing articles of dissolution and issuing a certificate of dissolution, $5;

(9) filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, $20;

(10) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, $20;

(11) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, $10;

(12) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, $20;

(13) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $5;

(14) filing an annual report, $5;

(15) filing any other statement or report, except an annual report, of a domestic or foreign corporation, $2.

History: **En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969; R.C.M. 1947, 15-2383; amd. Sec. 7, Ch. 202, L. 1979.**

35-2-1002. Miscellaneous charges. The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument, or paper relating to a corporation, 50 cents per page and $2 for the certificate and affixing the seal thereto;

(2) for furnishing any certificate not mentioned in this or the preceding section, $5.

History: En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971; R.C.M. 1947, 15-2384.

Part 11

Secretary of State

35-2-1101. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

History: En. Sec. 87, Ch. 198, L. 1967; R.C.M. 1947, 15-2387.

35-2-1102. Forms to be prescribed by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made in a form which shall be prescribed by the secretary of state.

History: En. Sec. 90, Ch. 198, L. 1967; R.C.M. 1947, 15-2390.

35-2-1103. Appeal from secretary of state. (1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

(2) From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is or is proposed to be situated or in the district court of Lewis and Clark County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(3) If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the

action of the secretary of state or direct him to take such action as the court may deem proper.

(4) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

History: **En. Sec. 88, Ch. 198, L. 1967; R.C.M. 1947, 15-2388.**

35-2-1104. Duty of secretary of state to certify copy of articles or amendments. The secretary of state shall upon request certify a copy of the articles of incorporation or the articles of incorporation as restated or any amendments to either thereof.

History: **En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part).**

35-2-1105. Certificates and certified copies as prima facie evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter and all copies of documents filed in his office in accordance with the provisions of this chapter, when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations, which would appear from the presence or absence of documents filed in his office or the compliance or noncompliance with the provisions of this chapter, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: **En. Sec. 89, Ch. 198, L. 1967; R.C.M. 1947, 15-2389.**

CHAPTER 3

RELIGIOUS CORPORATIONS SOLE

Part 1 — General

Section
35-3-101. Short title.
35-3-102. Applicability.
35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred.

Part 2 — Formation and Operation

35-3-201. When corporation sole may be created.
35-3-202. Articles of incorporation.
35-3-203. Effect of issuance of certificate of incorporation.
35-3-204. Unauthorized assumption of corporate powers — liability.
35-3-205. Powers of corporation sole.
35-3-206. Amendment of articles of incorporation.
35-3-207. Succession.
35-3-208. Board of advisors or consultors — interim powers.
35-3-209. Annual report.

Part 1

General

35-3-101. Short title. This chapter shall be known and may be cited as the "Montana Religious Corporation Sole Act".

History: **En. Sec. 1, Ch. 301, L. 1967; R.C.M. 1947, 15-2401.**

35-3-102. Applicability. The provisions of this chapter shall apply to corporations sole existing on December 31, 1968, or formed in accordance herewith and the Montana Nonprofit Corporation Act shall apply thereto only when not inconsistent with the provisions of this chapter. Foreign corporations sole will likewise be governed by the applicable provisions of the Montana Nonprofit Corporation Act when not inconsistent with the provisions of this chapter.

History: **En. Sec. 2, Ch. 301, L. 1967; R.C.M. 1947, 15-2402(part).**

35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: **En. Sec. 12, Ch. 301, L. 1967; R.C.M. 1947, 15-2412.**

Part 2

Formation and Operation

35-3-201. When corporation sole may be created. Whenever the rules or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a corporation sole in the manner herein prescribed.

History: **En. Sec. 3, Ch. 301, L. 1967; R.C.M. 1947, 15-2403.**

35-3-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the name of the religious denomination, society, or church creating the corporation sole;

(d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which he presides or over which his jurisdiction extends and the facts authorizing such incorporation;

(e) the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules or discipline of such religious denomination, society, or church, shall be filled;

(f) any provisions, not inconsistent with law, which the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its initial registered office and the name of its initial registered agent at such address;

(h) the name and address of the incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles shall be verified by affidavit of the incorporator, and he shall also file the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed as sufficient attestation thereof.

History: **En. Sec. 4, Ch. 301, L. 1967; R.C.M. 1947, 15-2404.**

35-3-203. Effect of issuance of certificate of incorporation. (1) Upon filing the articles of incorporation in the office of the secretary of state with proof of appointment or election of such bishop, chief priest, or presiding elder, the secretary of state must issue to the corporation over the great seal of the state a certificate of incorporation.

(2) Upon the issuance of this certificate, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporator have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: **En. Sec. 5, Ch. 301, L. 1967; R.C.M. 1947, 15-2405.**

35-3-204. Unauthorized assumption of corporate powers — liability. All persons who assume to act as a corporation hereunder without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as the result thereof.

History: **En. Sec. 11, Ch. 301, L. 1967; R.C.M. 1947, 15-2411.**

35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust hereinafter mentioned, shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, provided that all such property shall be in trust for the use, purpose, and benefit of such religious denomination, society, or church for which and in whose behalf such corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or his successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: **En. Sec. 6, Ch. 301, L. 1967; R.C.M. 1947, 15-2406.**

35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder shall have filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments thereto or under this chapter, such corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

(2) Such articles of amendment shall be promulgated by the incorporator or his successor by setting forth a statement of the facts authorizing such amendment and the date upon which said amendment was promulgated, and his affidavit that the same is a true copy or translation thereof shall be deemed a sufficient attestation thereof.

History: En. Sec. 10, Ch. 301, L. 1967; R.C.M. 1947, 15-2410.

35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of his transfer or removal therefrom by the person or body having the authority to remove him, his successor in office shall succeed to the powers, rights, and obligations of the office and shall become vested with the title to the property with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto.

(2) Succession shall be effected when the successor shall file in the office of the secretary of state the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed sufficient attestation thereof.

History: En. Sec. 7, Ch. 301, L. 1967; R.C.M. 1947, 15-2407.

35-3-208. Board of advisors or consultors — interim powers. The bishop, chief priest, or presiding elder of the corporation sole created hereby may appoint a board of advisors or consultors consisting of at least four persons of legal age and otherwise qualified according to the rules or discipline of the denomination, society, or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal, or deprivation of office of the bishop, chief priest, or presiding elder and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest, or presiding elder is appointed, elected, or qualified according to the rules or discipline of the denomination, society, or church.

History: En. Sec. 8, Ch. 301, L. 1967; amd. Sec. 1, Ch. 113, L. 1977; R.C.M. 1947, 15-2408.

35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act, an annual report setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address;

(c) the names and respective addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report shall be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by such chief corporate officer.
History: **En. Sec. 9, Ch. 301, L. 1967; R.C.M. 1947, 15-2409.**

CHAPTER 4

PROFESSIONAL SERVICE CORPORATIONS

Part 1 — General

Section
35-4-101. Short title.
35-4-102. Legislative intent.
35-4-103. Definitions.
35-4-104. Applicability of chapter.
35-4-105. Applicability of general corporate law.
35-4-106. Construction.
35-4-107. Permissible purpose for incorporation.

Part 2 — Organization and Operation

35-4-201. Corporate name — use of fictitious name — advertising.
35-4-202. Who may be shareholders — restrictions on shareholders.
35-4-203. Board of directors.
35-4-204. Annual report.
Sections 35-4-205 through 35-4-210 reserved.
35-4-211. Transfer of shares.
35-4-212. Merger and consolidation.
35-4-213. How service rendered.
35-4-214. Relationship to person served — malpractice liability.
35-4-215. Limitation on other business.
35-4-216. Legal disqualification to practice — severance of employment and financial interest required.

Part 1

General

35-4-101. Short title. This chapter may be cited as "The Professional Service Corporation Act".
History: **En. Sec. 4, Ch. 161, L. 1963; R.C.M. 1947, 15-2102.**

35-4-102. Legislative intent. It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to have obtained other legal authorization.
History: **En. Sec. 3, Ch. 161, L. 1963; R.C.M. 1947, 15-2101.**

35-4-103. Definitions. As used in this chapter, the following words shall have the meaning indicated:

(1) The term "professional service" means any professional service rendered by attorneys, certified public accountants, public accountants, chiropractors, dentists, osteopaths, doctors of medicine, chiropodists, architects,

veterinarians, optometrists, nurses, pharmacists, physical therapists, and professional engineers.

(2) The term "professional corporation" means a corporation which is organized under this chapter for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

History: **En. Sec. 5, Ch. 161, L. 1963; amd. Sec. 1, Ch. 56, L. 1965; amd. Sec. 1, Ch. 10, L. 1967; R.C.M. 1947, 15-2103.**

35-4-104. Applicability of chapter. This chapter shall not apply to any individuals or groups of individuals within this state who prior to March 5, 1963, were permitted to organize a corporation and perform personal services to the public by the means of a corporation, and this chapter shall not apply to any corporations organized by such individual or group of individuals prior to March 5, 1963. However, any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this chapter by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this chapter and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this chapter.

History: **En. Sec. 6, Ch. 161, L. 1963; R.C.M. 1947, 15-2104.**

35-4-105. Applicability of general corporate law. Montana statutes shall be applicable to a corporation organized pursuant to this chapter, except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions of such statutes, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized pursuant to the provisions of this chapter.

History: **En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).**

35-4-106. Construction. The provisions of this chapter shall not be construed as repealing, modifying, or restricting the applicable provisions of law relating to incorporations, sales of securities, or regulating the several professions enumerated in this chapter, except insofar as such laws conflict with the provisions of this chapter.

History: **En. Sec. 19, Ch. 161, L. 1963; R.C.M. 1947, 15-2116.**

35-4-107. Permissible purpose for incorporation. An individual or group of individuals licensed or otherwise authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 35, chapter 1, for the sole and specific purpose of rendering the same and specific professional service.

History: **En. Sec. 7, Ch. 161, L. 1963; amd. Sec. 9, Ch. 62, L. 1977; R.C.M. 1947, 15-2105.**

Part 2

Organization and Operation

35-4-201. Corporate name — use of fictitious name — advertising. (1) Every corporation organized under this chapter and transacting business in this state under a fictitious name or a designation not showing the names of all the shareholders in such corporation shall file and publish or cause to be filed and published the certificates described in 35-11-101, 35-11-102, and 35-11-103. Any such corporation doing business contrary to the provisions of this section shall be subject to the disabilities and provisions of 35-11-102.

(2) Every corporation organized under this chapter is prohibited from advertising the professional services rendered by the members of said corporation.

History: **En. Sec. 14, Ch. 161, L. 1963; R.C.M. 1947, 15-2112.**

35-4-202. Who may be shareholders — restrictions on shareholders. (1) No corporation organized under the provisions of this chapter may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated.

(2) No individual shall hold stock or in any way have any interest in more than one corporation organized under this chapter.

(3) No shareholder of a corporation organized under this chapter shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock.

History: **En. Sec. 11, Ch. 161, L. 1963; R.C.M. 1947, 15-2109.**

35-4-203. Board of directors. The number of shareholder members of the board of directors may be less than the number of shareholders, and if a corporation has only one shareholder, the board may consist of such shareholder.

History: **En. Sec. 15, Ch. 161, L. 1963; R.C.M. 1947, 15-2113; amd. Sec. 8, Ch. 202, L. 1979.**

35-4-204. Annual report. The annual report of a professional corporation shall list the names and post-office addresses of all shareholders and shall certify that all shareholders are duly licensed or otherwise legally authorized in this state to render the same professional service as the corporation.

History: **En. Sec. 17, Ch. 161, L. 1963; R.C.M. 1947, 15-2115.**

35-4-205 through 35-4-210 reserved.

35-4-211. Transfer of shares. (1) No shareholder of a corporation organized under this chapter may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation, and such sale or transfer may be made only after it has been approved at a shareholders' meeting by such proportion, not less than a majority, of the outstanding stock as may be provided in the articles of incorporation or in the bylaws. At such shareholders' meeting the shares of stock held by the shareholder proposing to sell or transfer his shares may not be voted or counted for any purpose.

(2) The articles of incorporation may provide specifically for additional restraints on the alienation of shares and may require the redemption or purchase of such shares by the corporation at prices and in a manner specifically

set forth in such articles, or the articles may specifically authorize the corporation's board of directors or its shareholders to adopt bylaws or resolutions restraining the alienation of shares and providing for the purchase or redemption by the corporation of its shares. However, such provisions dealing with the purchase or redemption by the corporation of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation.

History: En. Sec. 13, Ch. 161, L. 1963; R.C.M. 1947, 15-2111; amd. Sec. 9, Ch. 202, L. 1979.

35-4-212. Merger and consolidation. A professional corporation organized under this chapter shall consolidate or merge only with another domestic professional corporation organized under this chapter to render the same specific professional service, and a merger or consolidation with any foreign corporation is prohibited.

History: En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-213. How service rendered. No corporation organized and incorporated under this chapter may render professional services except through its officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services within this state. However, this provision shall not be interpreted to include in the term "employee", as used herein, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

History: En. Sec. 8, Ch. 161, L. 1963; R.C.M. 1947, 15-2106.

35-4-214. Relationship to person served — malpractice liability. Nothing contained in this chapter shall be interpreted to abolish, repeal, modify, restrict, or limit the law or professional ethics in effect on July 1, 1963, in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent, or employee or a corporation organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall also be liable for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.

History: En. Sec. 9, Ch. 161, L. 1963; R.C.M. 1947, 15-2107.

35-4-215. Limitation on other business. No corporation organized under this chapter shall engage in any business other than the rendering of the professional services for which it was specifically incorporated. However, nothing in this chapter or in any other provisions of law existing on July 1, 1963, applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments or from owning real or personal property necessary for the rendering of professional services.

History: En. Sec. 10, Ch. 161, L. 1963; R.C.M. 1947, 15-2108.

35-4-216. Legal disqualification to practice — severance of employment and financial interest required. If any officer, shareholder, agent, or employee of a corporation organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, he shall sever all employment with and financial interests in such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation.

History: En. Sec. 12, Ch. 161, L. 1963; R.C.M. 1947, 15-2110.

CHAPTER 5

BUSINESS TRUSTS

Part 1 — General

Section

35-5-101. Definition of business trust.
35-5-102. Classification of business trusts.
35-5-103. Applicability of general corporate law.
35-5-104. Business trust authorized as form of association.

Part 2 — Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.
35-5-202. Issuance of certificate or license — effect.
35-5-203. Amendment to creating instrument — filing.
35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument.
35-5-205. Taxes and fees.

Part 1

General

35-5-101. Definition of business trust. In this chapter, unless the context otherwise requires, "business trust" means an unincorporated association or trust of the type which at common law was known as a "business trust" or "Massachusetts trust", created by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as are or may become the holders of transferable certificates evidencing beneficial interests in the trust estate.

History: En. Sec. 1, Ch. 277, L. 1967; R.C.M. 1947, 15-2501.

35-5-102. Classification of business trusts. Business trusts shall be either domestic or foreign. A domestic business trust is a business trust organized under the laws of this state. A foreign business trust includes every other business trust.

History: **En. Sec. 2, Ch. 277, L. 1967; R.C.M. 1947, 15-2502.**

35-5-103. Applicability of general corporate law. Any business trust shall be subject to such applicable provisions of law from time to time in effect with respect to domestic and foreign corporations, respectively. These shall include without limitation such applicable provisions of law as relate to the issuance of securities, filing of required statements and reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate, and otherwise deal in or with real property.

History: **En. Sec. 8, Ch. 277, L. 1967; R.C.M. 1947, 15-2508.**

35-5-104. Business trust authorized as form of association. A business trust is permitted as a recognized form of association for the conduct of business within this state.

History: **En. Sec. 3, Ch. 277, L. 1967; R.C.M. 1947, 15-2503.**

Part 2

Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process. (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1008 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts

of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust.

History: **En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(1), (2).**

35-5-202. Issuance of certificate or license — effect. Whenever a business trust has complied with the filing requirements as provided in 35-5-201, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and the business trust may thereupon commence business.

History: **En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(3).**

35-5-203. Amendment to creating instrument — filing. The articles, declaration of trust, or trust agreement by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to such business trust, provided that no such amendment shall be legally effective in this state until a copy thereof, certified as provided in 35-5-201(1)(a), has been filed with the secretary of state of Montana and a copy thereof, certified by the secretary of state, has been filed in the office of the county clerk and recorder in the county where the principal place of business of the trust is located.

History: **En. Sec. 5, Ch. 277, L. 1967; R.C.M. 1947, 15-2505.**

35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument. (1) Subject to the provisions of 35-5-205, the powers and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created, as amended, which instrument shall be construed and interpreted in accordance with the law applicable to such business trust, provided that no business trust shall engage in any activity in this state which would violate the public policy of this state or engage in any business in this state which private corporations for profit organized under the laws of this state may not legally transact.

(2) Subject to the limitations on power and authority as provided in subsection (1) of this section, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the business trust was created and by any amendments thereto which have been filed and recorded in compliance with 35-5-203.

History: **En. Sec. 6, Ch. 277, L. 1967; R.C.M. 1947, 15-2506.**

35-5-205. Taxes and fees. Any business trust created under this chapter or entering this state pursuant to this chapter shall pay such taxes and fees as are imposed by the laws, ordinances, and regulations of this state and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith.

History: **En. Sec. 7, Ch. 277, L. 1967; R.C.M. 1947, 15-2507.**

CHAPTER 6

INVOLUNTARY CORPORATE DISSOLUTION

Part 1 — Dissolution by Secretary of State

Section

35-6-101. Applicability to corporations presently in default.
35-6-102. Involuntary dissolution — grounds.
35-6-103. Defaulting corporations — penalties and forfeitures.
35-6-104. Involuntary dissolution — procedure.

Part 2 — Reinstatement

35-6-201. Reinstatement of dissolved corporation.
35-6-202. Relation back of corporate rights restored.
35-6-203. Acquisition of new name by corporation upon reinstatement.

Part 1

Dissolution by Secretary of State

35-6-101. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this chapter to dissolve corporations that have been in default prior to July 1, 1977.

History: En. 15-2706 by Sec. 6, Ch. 455, L. 1977; R.C.M. 1947, 15-2706.

35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.

History: En. Sec. 87, Ch. 300, L. 1967; Sec. 15-2287, R.C.M. 1947; amd. and redes. 15-2701 by Sec. 1, Ch. 455, L. 1977; R.C.M. 1947, 15-2701.

35-6-103. Defaulting corporations — penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 35-6-102(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

History: En. 15-2702 by Sec. 2, Ch. 455, L. 1977; R.C.M. 1947, 15-2702.

35-6-104. Involuntary dissolution — procedure. (1) On or before April 1, August 1, and September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the posting and mailing or publication of notice:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following posting and mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 35-1-921 or 35-2-711, whichever is appropriate, is applicable to liquidate such property and assets if necessary.

History: En. 15-2703 by Sec. 3, Ch. 455, L. 1977; R.C.M. 1947, 15-2703; amd. Sec. 4, Ch. 78, L. 1979.

Part 2

Reinstatement

35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application, executed and verified by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement; and

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(1) thru (4), (6); amd. Sec. 5, Ch. 78, L. 1979.

35-6-202. Relation back of corporate rights restored. Any restoration of corporate rights pursuant to this chapter relates back to the date the corporation was involuntarily dissolved, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(5).

35-6-203. Acquisition of new name by corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

History: En. 15-2705 by Sec. 5, Ch. 455, L. 1977; R.C.M. 1947, 15-2705.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

PARTNERSHIPS IN GENERAL

Part 1 — Preliminary Provisions

Section

35-10-101. Short title.
35-10-102. Definitions.
35-10-103. Interpretation of knowledge and notice.
35-10-104. Rules of construction.
35-10-105. Rules for cases not provided for in this chapter.

Part 2 — Nature of Partnership

35-10-201. Partnership defined.
35-10-202. Rules for determining the existence of a partnership.
35-10-203. Partnership property.

Part 3 — Relation of Partner and Partnership to Other Persons

35-10-301. Partner as agent of partnership — restrictions on partner's authority.
35-10-302. Conveyance of real property of the partnership.
35-10-303. Partnership bound by admission of partner.
35-10-304. Partnership charged with knowledge of or notice to partner.
35-10-305. Partnership liable for partner's wrongful act.
35-10-306. Partnership bound by partner's breach of trust.
35-10-307. Nature of partner's liability.
35-10-308. Partner by estoppel.
35-10-309. Liability of incoming partner.

Part 4 — Relation of Partners to Partnership and to One Another

35-10-401. Rules determining rights and duties of partners.
35-10-402. Partnership books — inspection rights.
35-10-403. Duty of partners to render information.
35-10-404. Right to an account.
35-10-405. Partner accountable as a fiduciary for benefit derived without consent.
35-10-406. Rights and duties of partners when partnership continues beyond fixed term.

Part 5 — Property Rights of a Partner

35-10-501. Classification of property rights of a partner.
35-10-502. Nature of a partner's rights in specific partnership property.
35-10-503. Nature of partner's interest in the partnership.
35-10-504. Assignment of partner's interest.
35-10-505. Partner's interest subject to charging order.
35-10-506. Partner's application to discharge attachment — undertaking.
35-10-507. Repealed. Sec. 12, Ch. 202, L. 1979.

Part 6 — Dissolution and Winding Up

35-10-601. Dissolution defined.
35-10-602. Partnership not terminated by dissolution.

35-10-603. Causes of dissolution.
35-10-604. Dissolution by decree of court.
35-10-605. General effect of dissolution on authority of partner.
35-10-606. Right of partner to contribution from copartners after dissolution.
35-10-607. Power of partner to bind partnership to third persons after dissolution.
35-10-608. Effect of dissolution on partner's existing liability.
35-10-609. Right to wind up.
35-10-610. Rights of partners after dissolution to application of partnership property or to continue business.
35-10-611. Rights when partnership contract is rescinded for fraud or misrepresentation.
35-10-612. Rules for distribution — payment priorities.
35-10-613. Status of creditors when business continued after dissolution without liquidation — liability of persons continuing business.
35-10-614. Rights of retiring or estate of deceased partner when the business is continued.
35-10-615. Accrual of right to account.

Part 1

Preliminary Provisions

35-10-101. Short title. This chapter may be cited as "Uniform Partnership Act".

History: En. Sec. 1, Ch. 251, L. 1947; R.C.M. 1947, 63-101.

35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act.

(2) "Business" includes every trade, occupation, or profession.

(3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

(4) "Court" includes every court and judge having jurisdiction in the case.

(5) "Person" includes individuals, partnerships, corporations, and other associations.

(6) "Real property" includes land and any interest or estate in land.

History: En. Sec. 2, Ch. 251, L. 1947; R.C.M. 1947, 63-102.

35-10-103. Interpretation of knowledge and notice. (1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) states the fact to such person; or

(b) delivers through the mail or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence.

History: En. Sec. 3, Ch. 251, L. 1947; R.C.M. 1947, 63-103.

35-10-104. Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 1, 1947, or to affect any action or proceedings begun or right accrued before July 1, 1947.

History: En. Sec. 4, Ch. 251, L. 1947; R.C.M. 1947, 63-104.

35-10-105. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

History: En. Sec. 5, Ch. 251, L. 1947; R.C.M. 1947, 63-105.

Part 2

Nature of Partnership

35-10-201. Partnership defined. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state or any statute adopted by authority other than the authority of this state is not a partnership under this chapter unless such association would have been a partnership in this state prior to the adoption of this chapter. But this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

History: En. Sec. 6, Ch. 251, L. 1947; R.C.M. 1947, 63-106.

35-10-202. Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by 35-10-308 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that such person is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) as a debt by installments or otherwise;

(b) as wages of an employee or rent to a landlord;

(c) as an annuity to a surviving spouse or representative of a deceased partner;

(d) as interest on a loan, though the amount of payment varies with the profits of the business;

(e) as the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

History: En. Sec. 7, Ch. 251, L. 1947; amd. Sec. 28, Ch. 535, L. 1975; R.C.M. 1947, 63-107.

35-10-203. Partnership property. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

History: En. Sec. 8, Ch. 251, L. 1947; R.C.M. 1947, 63-108.

Part 3

Relation of Partner and Partnership to Other Persons

35-10-301. Partner as agent of partnership — restrictions on partner's authority. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) dispose of the goodwill of the business;

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership;

(d) confess a judgment;

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

History: En. Sec. 9, Ch. 251, L. 1947; R.C.M. 1947, 63-201.

35-10-302. Conveyance of real property of the partnership. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name, but the partnership may recover such property unless the partner's act binds the partnership under the provisions of 35-10-301(1) or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(3) Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of 35-10-301(1), unless the purchaser or his assignee is a holder for value without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

History: En. Sec. 10, Ch. 251, L. 1947; R.C.M. 1947, 63-202.

35-10-303. Partnership bound by admission of partner. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

History: En. Sec. 11, Ch. 251, L. 1947; R.C.M. 1947, 63-203.

35-10-304. Partnership charged with knowledge of or notice to partner. Notice to any partner of any matter relating to partnership affairs and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

History: En. Sec. 12, Ch. 251, L. 1947; R.C.M. 1947, 63-204.

35-10-305. Partnership liable for partner's wrongful act. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person not being a partner in the partnership or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

History: En. Sec. 13, Ch. 251, L. 1947; R.C.M. 1947, 63-205.

35-10-306. Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

(1) where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

History: En. Sec. 14, Ch. 251, L. 1947; R.C.M. 1947, 63-206.

35-10-307. Nature of partner's liability. All partners are liable:

(1) jointly and severally for everything chargeable to the partnership under 35-10-305 and 35-10-306;

(2) jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract.

History: **En. Sec. 15, Ch. 251, L. 1947; R.C.M. 1947, 63-207.**

35-10-308. Partner by estoppel. (1) When a person by words spoken or written or by conduct represents himself or consents to another representing him to anyone as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made who has on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made. When a partnership liability results, he is liable as though he were an actual member of the partnership. When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results, but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

History: **En. Sec. 16, Ch. 251, L. 1947; R.C.M. 1947, 63-208.**

35-10-309. Liability of incoming partner. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

History: **En. Sec. 17, Ch. 251, L. 1947; R.C.M. 1947, 63-209.**

Part 4

Relation of Partners to Partnership and to One Another

35-10-401. Rules determining rights and duties of partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are

satisfied and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property.

(3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

History: En. Sec. 18, Ch. 251, L. 1947; R.C.M. 1947, 63-301.

35-10-402. Partnership books — inspection rights. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

History: En. Sec. 19, Ch. 251, L. 1947; R.C.M. 1947, 63-302.

35-10-403. Duty of partners to render information. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

History: En. Sec. 20, Ch. 251, L. 1947; R.C.M. 1947, 63-303.

35-10-404. Right to an account. Any partner shall have the right to a formal account as to partnership affairs:

(1) if he is wrongfully excluded from the partnership business or possession of its property by his copartners;

(2) if the right exists under the terms of any agreement;

(3) as provided by 35-10-405;

(4) whenever other circumstances render it just and reasonable.

History: En. Sec. 22, Ch. 251, L. 1947; R.C.M. 1947, 63-305.

35-10-405. Partner accountable as a fiduciary for benefit derived without consent. (1) Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

History: En. Sec. 21, Ch. 251, L. 1947; R.C.M. 1947, 63-304.

35-10-406. Rights and duties of partners when partnership continues beyond fixed term. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs is prima facie evidence of a continuation of the partnership.

History: En. Sec. 23, Ch. 251, L. 1947; R.C.M. 1947, 63-306.

Part 5

Property Rights of a Partner

35-10-501. Classification of property rights of a partner. The property rights of a partner are:

(1) his rights in specific partnership property;

(2) his interest in the partnership; and

(3) his right to participate in the management.

History: En. Sec. 24, Ch. 251, L. 1947; R.C.M. 1947, 63-401.

35-10-502. Nature of a partner's rights in specific partnership property. (1) A partner is co-owner with the other partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes but has no right to possess such property for any other purpose without the consent of the other partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner that partner's right in specific partnership property vests in the surviving partner or partners except where the deceased was the last surviving partner, in which case such deceased partner's right in such property vests in the deceased's legal representative. Such surviving partner or partners or the legal representative of the last surviving partner has no right to possess the partnership property for any but a partnership purpose.

(e) Provided the proceeds of a deceased partner's interest are included in the assets of the decedent's estate, such property is not subject to a lien of the surviving spouse for his or her elective share or a lien for or allowances to surviving spouses, heirs, or next of kin.

History: **En. Sec. 25, Ch. 251, L. 1947; amd. Sec. 29, Ch. 535, L. 1975; R.C.M. 1947, 63-402.**

35-10-503. Nature of partner's interest in the partnership. A partner's interest in the partnership is his share of the profits and surplus and the same is personal property.

History: **En. Sec. 26, Ch. 251, L. 1947; R.C.M. 1947, 63-403.**

35-10-504. Assignment of partner's interest. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership or as against the other partners in the absence of agreement entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs or to require any information or account of partnership transactions or to inspect the partnership books. It merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

History: **En. Sec. 27, Ch. 251, L. 1947; R.C.M. 1947, 63-404.**

35-10-505. Partner's interest subject to charging order. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree or any other court may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) with separate property, by any one or more of the partners; or

(b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership.

History: **En. Sec. 28, Ch. 251, L. 1947; R.C.M. 1947, 63-405.**

35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon such an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment which may be recovered against the partner who is defendant in the action or which may be recovered against him in any other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment which was so levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be such as the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference.

History: En. Secs. 921, 922, C. Civ. Proc. 1895; re-en. Secs. 6688, 6689, Rev. C. 1907; re-en. Secs. 9289, 9290, R.C.M. 1921; re-en. Secs. 9289, 9290, R.C.M. 1935; R.C.M. 1947, 93-4336, 93-4337; amd. Sec. 10, Ch. 202, L. 1979.

35-10-507. Repealed. Sec. 12, Ch. 202, L. 1979.

Part 6

Dissolution and Winding Up

35-10-601. Dissolution defined. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

History: En. Sec. 29, Ch. 251, L. 1947; R.C.M. 1947, 63-501.

35-10-602. Partnership not terminated by dissolution. On dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed.

History: En. Sec. 30, Ch. 251, L. 1947; R.C.M. 1947, 63-502.

35-10-603. Causes of dissolution. (1) Dissolution is caused, without violation of the agreement between the partners by:

(a) the termination of the definite term or particular undertaking specified in the agreement;

(b) the express will of any partner when no definite term or particular undertaking is specified;

(c) the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;

(d) the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners.

(2) Dissolution is caused, in contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time.

(3) Dissolution is caused by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership.

(4) Dissolution is caused by the death of any partner.

(5) Dissolution is caused by the bankruptcy of any partner or the partnership.

(6) Dissolution is caused by decree of court under 35-10-604.

History: En. Sec. 31, Ch. 251, L. 1947; R.C.M. 1947, 63-503.

35-10-604. Dissolution by decree of court. (1) On application by or for a partner, the court shall decree a dissolution whenever:

(a) a partner is declared seriously mentally ill in a judicial proceeding or is shown to be mentally incompetent;

(b) a partner becomes in any other way incapable of performing his part of the partnership contract;

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(d) a partner willfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

(e) the business of the partnership can only be carried on at a loss; or

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under 35-10-504 or 35-10-505, the court shall decree a dissolution:

(a) after the termination of the specified term or particular undertaking;

(b) at any time if the partnership was a partnership at will when the interest was assigned or when the order charging such interest was issued.

History: En. Sec. 32, Ch. 251, L. 1947; amd. Sec. 14, Ch. 62, L. 1977; R.C.M. 1947, 63-504.

35-10-605. General effect of dissolution on authority of partner. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

(1) with respect to the partners:

(a) when the dissolution is not by the act, bankruptcy, or death of a partner; or

(b) when the dissolution is by such act, bankruptcy, or death of a partner in cases where 35-10-606 so requires;

(2) with respect to persons not partners, as declared in 35-10-607.

History: En. Sec. 33, Ch. 251, L. 1947; R.C.M. 1947, 63-505.

35-10-606. Right of partner to contribution from copartners after dissolution. Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(2) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

History: **En. Sec. 34, Ch. 251, L. 1947; R.C.M. 1947, 63-506.**

35-10-607. Power of partner to bind partnership to third persons after dissolution. (1) After dissolution a partner can bind the partnership, except as provided in subsection (3):

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(ii) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under subsection (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs;

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs, except by a transaction with one who:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(ii) had not extended credit to the partnership prior to dissolution and having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in subsection (1)(b)(ii).

(4) Nothing in this section shall affect the liability under 35-10-308 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

History: **En. Sec. 35, Ch. 251, L. 1947; R.C.M. 1947, 63-507.**

35-10-608. Effect of dissolution on partner's existing liability. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor, and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

History: **En. Sec. 36, Ch. 251, L. 1947; R.C.M. 1947, 63-508.**

35-10-609. Right to wind up. Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs. However, any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

History: **En. Sec. 37, Ch. 251, L. 1947; R.C.M. 1947, 63-509.**

35-10-610. Rights of partners after dissolution to application of partnership property or to continue business. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities either by payment or agreement under 35-10-608(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement, the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(i) all the rights specified in subsection (1) of this section; and

(ii) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name either by themselves or jointly with others, may do so during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court or pay to any partner who has caused the dissolution wrongfully the value of his interest in the partnership at the dissolution, less any damages recoverable under (2)(a)(ii) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(i) if the business is not continued under the provisions of (2)(b), all the rights of a partner under (1), subject to (2)(a)(ii) of this section;

(ii) if the business is continued under (2)(b) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid him in cash or the payment secured by bond approved by the court and to be released from all existing liabilities of the partnership, but in ascertaining the value of the partner's interest, the value of the goodwill of the business shall not be considered.

History: **En. Sec. 38, Ch. 251, L. 1947; R.C.M. 1947, 63-510.**

35-10-611. Rights when partnership contract is rescinded for fraud or misrepresentation. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled to:

(1) a lien on or right of retention of the surplus of the partnership property, after satisfying the partnership liabilities to third persons, for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(2) stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect to the partnership liabilities; and

(3) be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

History: **En. Sec. 39, Ch. 251, L. 1947; R.C.M. 1947, 63-511.**

35-10-612. Rules for distribution — payment priorities. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) the partnership property;

(b) the contributions of the partners necessary for the payment of all the liabilities specified in subsection (2) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) those owing to creditors other than partners;

(b) those owing to partners other than for capital and profits;

(c) those owing to partners in respect of capital;

(d) those owing to partners in respect of profits.

(3) The assets shall be applied in the order of their declaration in subsection (1) of this section to the satisfaction of the liabilities.

(4) The partners shall contribute, as provided by 35-10-401(1), the amount necessary to satisfy the liabilities; but if any but not all of the partners are insolvent or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subsection (4) of this section.

(6) Any partner or his legal representative shall have the right to enforce the contributions specified in subsection (4) of this section, to the extent of the amount which he has paid in excess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subsection (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors.

(9) Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

(a) those owing to separate creditors;

(b) those owing to partnership creditors;

(c) those owing to partners by way of contribution.

History: **En. Sec. 40, Ch. 251, L. 1947; R.C.M. 1947, 63-512.**

35-10-613. Status of creditors when business continued after dissolution without liquidation — liability of persons continuing business. (1) When any new partner is admitted into an existing partnership or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner who continues the business without liquidation of partnership affairs either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (1) and (2) of this section with the consent of the retired partners or the representative of the deceased partner but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of 35-10-610(2)(b) either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use, by the person or partnership continuing the business, of the partnership name or the name of a deceased partner as part thereof shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

History: **En. Sec. 41, Ch. 251, L. 1947; R.C.M. 1947, 63-513.**

35-10-614. Rights of retiring or estate of deceased partner when the business is continued. When any partner retires or dies and the business is continued under any of the conditions set forth in subsections (1), (2), (3), (5), or (6) of 35-10-613, or 35-10-610(2)(b) without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest or at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership, as against the separate creditors or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by 35-10-613(8).

History: **En. Sec. 42, Ch. 251, L. 1947; R.C.M. 1947, 63-514.**

35-10-615. Accrual of right to account. The right to an account of his interest shall accrue to any partner or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

History: **En. Sec. 43, Ch. 251, L. 1947; R.C.M. 1947, 63-515.**

CHAPTER 11

PARTNERSHIP — USE OF FICTITIOUS NAME

Part 1 — Provisions Relating to Partnerships

Section
35-11-101 through 35-11-103. Repealed. Sec. 18, Ch. 260, L. 1979.

Part 2 — Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk.
35-11-202. Certified copies of register and proof of publication to be evidence.

Part 1

Provisions Relating to Partnerships

35-11-101 through 35-11-103. Repealed. Sec. 18, Ch. 260, L. 1979.

Part 2

Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this chapter, entering in alphabetical order the name of every such partnership and of each partner therein.

History: En. Sec. 3283, Civ. C. 1895; re-en. Sec. 5507, Rev. C. 1907; re-en. Sec. 8022, R.C.M. 1921; Cal. Civ. C. Sec. 2470; Field Civ. C. Sec. 1326; re-en. Sec. 8022, R.C.M. 1935; R.C.M. 1947, 63-604.

35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, as herein directed, when certified by him and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts therein stated.

History: En. Sec. 3284, Civ. C. 1895; re-en. Sec. 5508, Rev. C. 1907; re-en. Sec. 8023, R.C.M. 1921; Cal. Civ. C. Sec. 2471; Field Civ. C. Sec. 1327; re-en. Sec. 8023, R.C.M. 1935; R.C.M. 1947, 63-605.

CHAPTER 12

LIMITED PARTNERSHIPS

Part 1 — General

Section
35-12-101. Short title.
35-12-102. Limited partnership defined.

35-12-103. Business which may be carried on.
35-12-104. Applicability to existing limited partnerships.
35-12-105. Rules of construction.
35-12-106. Rules for cases not provided for in this chapter.

Part 2 — Formation—Certificate

35-12-201. Formation.
35-12-202. Liability for false statements in certificate.
35-12-203. When certificate to be canceled or amended.
35-12-204. Procedure for amendment or cancellation of certificate.
35-12-205. Partnership name not to contain surname of limited partner — exceptions — liability.
35-12-206. Character of limited partner's contribution.
35-12-207. Admission of additional limited partners.

Part 3 — Powers, Duties, and Liabilities of Partners

35-12-301. Limited partner not liable as a general partner.
35-12-302. Contributor not proper party to proceedings — exceptions.
35-12-303. Nature of limited partner's interest in partnership.
35-12-304. Assignment of limited partner's interest — substituted limited partner.
35-12-305. Limited partner's interest subject to charging order.
35-12-306. Rights, powers, and liabilities of a general partner.
35-12-307. Rights of a limited partner.
35-12-308. Compensation of limited partner.
35-12-309. Liability of limited partner to partnership.
35-12-310. Transaction of business between partner and partnership.
35-12-311. Relations between limited partners.
35-12-312. Status of person erroneously believing himself a limited partner.
35-12-313. One person both general and limited partner.
35-12-314. Withdrawal or reduction of limited partner's contribution.

Part 4 — Dissolution

35-12-401. Causes of dissolution.
35-12-402. Death of limited partner — rights and liabilities of estate.
35-12-403. Settling accounts after dissolution — payment priorities.

Part 1

General

35-12-101. Short title. This chapter may be cited as the "Uniform Limited Partnership Act".

History: **En. Sec. 27, Ch. 252, L. 1947; R.C.M. 1947, 63-908.**

35-12-102. Limited partnership defined. A limited partnership is a partnership formed by two or more persons under the provisions of 35-12-201, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

History: **En. Sec. 1, Ch. 252, L. 1947; R.C.M. 1947, 63-701.**

35-12-103. Business which may be carried on. A limited partnership may carry on any business which a partnership without limited partners may carry on.

History: **En. Sec. 3, Ch. 252, L. 1947; R.C.M. 1947, 63-703.**

35-12-104. Applicability to existing limited partnerships. (1) A limited or special partnership formed under any statute of this state prior to July 1, 1947, may become a limited partnership under this chapter by complying with the provisions of 35-12-201, provided the certificate sets forth:

(a) the amount of the original contribution of each limited partner and the time when the contribution was made; and

(b) that the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited or special partnership formed under any statute of this state prior to July 1, 1947, until or unless it becomes a limited partnership under this chapter, shall continue to be governed by the provisions of the existing limited or special partnership acts, except that such partnership shall not be renewed unless so provided in the original agreement.

History: En. Sec. 30, Ch. 252, L. 1947; R.C.M. 1947, 63-911.

35-12-105. Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This chapter shall not be so construed as to impair the obligations of any contract existing on July 1, 1947, or to affect any action on proceedings begun or right accrued before July 1, 1947.

History: En. Sec. 28, Ch. 252, L. 1947; R.C.M. 1947, 63-909.

35-12-106. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

History: En. Sec. 29, Ch. 252, L. 1947; R.C.M. 1947, 63-910.

Part 2

Formation — Certificate

35-12-201. Formation. (1) Two or more persons desiring to form a limited partnership shall sign and swear to a certificate, which shall state the:

(a) name of the partnership;

(b) character of the business;

(c) location of the principal place of business;

(d) name and place of residence of each member, general and limited partners being respectively designated;

(e) term for which the partnership is to exist;

(f) amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

(g) additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they are to be made;

(h) time, if agreed upon, when the contribution of each limited partner is to be returned;

(i) share of the profits or the other compensation by way of income which each limited partner is to receive by reason of his contribution;

(j) right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution;

(k) right, if given, of the partners to admit additional limited partners;

(l) right, if given, of one or more of the limited partners to priority over other limited partners as to contributions or as to compensation by way of income and the nature of such priority;

(m) right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or serious mental illness of a general partner; and

(n) right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) Those persons shall file the certificate in the office of the county clerk and recorder of the county in which the principal place of business is located and in the office of the secretary of state.

(3) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsections (1) and (2).

History: En. Sec. 2, Ch. 252, L. 1947; amd. Sec. 1, Ch. 111, L. 1969; amd. Sec. 15, Ch. 62, L. 1977; R.C.M. 1947, 63-702.

35-12-202. Liability for false statements in certificate. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false at the time he signed the certificate or subsequently but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate or to file a petition for its cancellation or amendment as provided in 35-12-204(3).

History: En. Sec. 6, Ch. 252, L. 1947; R.C.M. 1947, 63-706.

35-12-203. When certificate to be canceled or amended. (1) The certificate shall be canceled if the partnership is dissolved or if all limited partners cease to be such.

(2) A certificate shall be amended if:

(a) there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner;

(b) a person is substituted as a limited partner;

(c) an additional limited partner is admitted;

(d) a person is admitted as a general partner;

(e) a general partner retires, dies, or becomes seriously mentally ill and the business is continued under 35-12-401(1);

(f) there is a change in the character of the business of the partnership;

(g) there is a false or erroneous statement in the certificate;

(h) there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;

(i) a time is fixed for the dissolution of the partnership or the return of a contribution, no time having been specified in the certificate; or

(j) the members desire to make a change in any statement in the certificate so that it accurately represents the agreement between them.

History: En. Sec. 24, Ch. 252, L. 1947; amd. Sec. 18, Ch. 62, L. 1977; R.C.M. 1947, 63-905.

35-12-204. Procedure for amendment or cancellation of certificate. (1) The writing to amend a certificate shall:

(a) conform to the requirements of 35-12-201(1) as far as necessary to set forth clearly the change in the certificate which it is desired to make; and

(b) be signed and sworn to by all members. An amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in subsections (1) and (2) as a person who must execute the writing refuses to do so, may petition the district court to direct a cancellation or amendment thereof. If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county clerk and recorder in the office where the certificate is filed and the secretary of state to file the cancellation or amendment of the certificate. Where the certificate is to be amended, the court shall also cause to be filed in said offices a certified copy of its decree setting forth the amendment.

(4) A certificate is amended or canceled when there is filed in the offices where the certificate is filed:

(a) a writing in accordance with the provisions of subsection (1) or (2); or

(b) a certified copy of the order of court in accordance with the provisions of subsection (3).

(5) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter.

History: **En. Sec. 25, Ch. 252, L. 1947; amd. Sec. 4, Ch. 111, L. 1969; R.C.M. 1947, 63-906.**

35-12-205. Partnership name not to contain surname of limited partner — exceptions — liability. (1) The surname of a limited partner shall not appear in the partnership name unless:

(a) it is also the surname of a general partner; or

(b) prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of subsection (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

History: **En. Sec. 5, Ch. 252, L. 1947; R.C.M. 1947, 63-705.**

35-12-206. Character of limited partner's contribution. The contributions of a limited partner may be cash or other property, but not services.

History: **En. Sec. 4, Ch. 252, L. 1947; R.C.M. 1947, 63-704.**

35-12-207. Admission of additional limited partners. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of 35-12-204.

History: **En. Sec. 8, Ch. 252, L. 1947; R.C.M. 1947, 63-802.**

Part 3

Powers, Duties, and Liabilities of Partners

35-12-301. Limited partner not liable as a general partner. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

History: **En. Sec. 7, Ch. 252, L. 1947; R.C.M. 1947, 63-801.**

35-12-302. Contributor not proper party to proceedings — exceptions. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

History: **En. Sec. 26, Ch. 252, L. 1947; R.C.M. 1947, 63-907.**

35-12-303. Nature of limited partner's interest in partnership. A limited partner's interest in the partnership is personal property.

History: **En. Sec. 18, Ch. 252, L. 1947; R.C.M. 1947, 63-812.**

35-12-304. Assignment of limited partner's interest — substituted limited partner. (1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee who does not become a substituted limited partner has no right to require any information or account of the partnership transactions or to inspect the partnership books. He is only entitled to receive the share of the profits or other compensation by way of income or the return of his contribution to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with 35-12-204.

(6) The substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under 35-12-202 and 35-12-309.

History: **En. Sec. 19, Ch. 252, L. 1947; R.C.M. 1947, 63-813.**

35-12-305. Limited partner's interest subject to charging order. (1) On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim and may appoint a receiver and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner but may not be redeemed with partnership property.

(3) The remedies conferred by subsection (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption.

History: En. Sec. 22, Ch. 252, L. 1947; R.C.M. 1947, 63-903.

35-12-306. Rights, powers, and liabilities of a general partner. A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners may not:

(1) do an act in contravention of the certificate;

(2) do an act which would make it impossible to carry on the ordinary business of the partnership;

(3) confess a judgment against the partnership;

(4) possess partnership property or assign their rights in specific partnership property for other than a partnership purpose;

(5) admit a person as a general partner;

(6) admit a person as a limited partner, unless the right so to do is given in the certificate;

(7) continue the business with partnership property on the death, retirement, or serious mental illness of a general partner unless the right to do so is given in the certificate.

History: En. Sec. 9, Ch. 252, L. 1947; amd. Sec. 16, Ch. 62, L. 1977; R.C.M. 1947, 63-803.

35-12-307. Rights of a limited partner. (1) A limited partner shall have the same rights as a general partner to:

(a) have the partnership books kept at the principal place of business of the partnership and at all times to inspect and copy any of them;

(b) have on demand true and full information of all things affecting the partnership and a formal account of partnership affairs whenever circumstances render it just and reasonable; and

(c) have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income and to the return of his contribution as provided in 35-12-308 and 35-12-314.

History: En. Sec. 10, Ch. 252, L. 1947; R.C.M. 1947, 63-804.

35-12-308. Compensation of limited partner. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate provided that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

History: En. Sec. 15, Ch. 252, L. 1947; R.C.M. 1947, 63-809.

35-12-309. Liability of limited partner to partnership. (1) A limited partner is liable to the partnership:

(a) for the difference between his contribution as actually made and that stated in the certificate as having been made; and

(b) for any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership:

(a) specific property stated in the certificate as contributed by him but which was not contributed or which has been wrongfully returned; and

(b) money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

History: En. Sec. 17, Ch. 252, L. 1947; R.C.M. 1947, 63-811.

35-12-310. Transaction of business between partner and partnership. (1) A limited partner also may loan money to and transact other business with the partnership and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim:

(a) receive or hold as collateral security any partnership property; or

(b) receive from a general partner or the partnership any payment, conveyance, or release from liability if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security or a payment, conveyance, or release in violation of the provisions of subsection (1) is a fraud on the creditors of the partnership.

History: En. Sec. 13, Ch. 252, L. 1947; R.C.M. 1947, 63-807.

35-12-311. Relations between limited partners. Where there are several limited partners, the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made, it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

History: En. Sec. 14, Ch. 252, L. 1947; R.C.M. 1947, 63-808.

35-12-312. Status of person erroneously believing himself a limited partner. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income.

History: **En. Sec. 11, Ch. 252, L. 1947; R.C.M. 1947, 63-805.**

35-12-313. One person both general and limited partner. (1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general and also at the same time a limited partner shall have all the rights and powers and be subject to all the restrictions of a general partner, except that in respect to his contribution he shall have the rights against the other members which he would have had if he were not also a general partner.

History: **En. Sec. 12, Ch. 252, L. 1947; R.C.M. 1947, 63-806.**

35-12-314. Withdrawal or reduction of limited partner's contribution. (1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(a) all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;

(b) the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of subsection (2); and

(c) the certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of subsection (1), a limited partner may rightfully demand the return of his contribution:

(a) on the dissolution of a partnership;

(b) when the date specified in the certificate for its return has arrived; or

(c) after he has given 6 months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

History: **En. Sec. 16, Ch. 252, L. 1947; R.C.M. 1947, 63-810(1) thru (3).**

Part 4

Dissolution

35-12-401. Causes of dissolution. (1) The retirement, death, or serious mental illness of a general partner dissolves the partnership unless the business is continued by the remaining general partners:

(a) under a right to do so stated in the certificate; or

(b) with the consent of all members.

(2) A limited partner may have the partnership dissolved and its affairs wound up when:

(a) he rightfully but unsuccessfully demands the return of his contribution; or

(b) the other liabilities of the partnership have not been paid or the partnership property is insufficient for their payment as required by 35-12-314(1)(a) and the limited partner would otherwise be entitled to the return of his contribution.

History: (1)En. Sec. 20, Ch. 252, L. 1947; amd. Sec. 17, Ch. 62, L. 1977; Sec. 63-901, R.C.M. 1947; (2)En. Sec. 16, Ch. 252, L. 1947; Sec. 63-810, R.C.M. 1947; R.C.M. 1947, 63-810(4), 63-901.

35-12-402. Death of limited partner — rights and liabilities of estate. (1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

History: En. Sec. 21, Ch. 252, L. 1947; R.C.M. 1947, 63-902.

35-12-403. Settling accounts after dissolution — payment priorities. (1) In settling accounts after dissolution, the liabilities of the partnership shall be entitled to payment in the following order:

(a) those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions and to general partners;

(b) those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions;

(c) those to limited partners in respect to the capital of their contributions;

(d) those to general partners other than for capital and profits;

(e) those to general partners in respect to profits;

(f) those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively in proportion to the respective amounts of such claims.

History: En. Sec. 23, Ch. 252, L. 1947; R.C.M. 1947, 63-904.

CHAPTER 13

MINING PARTNERSHIPS

Part 1 — Formation

Section
35-13-101. When a mining partnership exists.
35-13-102. Express agreement not necessary to formation.

Part 2 — Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding.

35-13-202. Owners of majority interest govern.
35-13-203. Mine — partnership property.
35-13-204. Profits and losses — how shared.
35-13-205. Lien of partner for debts due creditors.
35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner.
35-13-207. Purchaser takes subject to liens — exception for good faith purchaser.
35-13-208. When purchaser takes with notice of liens.

Part 1

Formation

35-13-101. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: En. Sec. 3350, Civ. C. 1895; re-en. Sec. 5535, Rev. C. 1907; re-en. Sec. 8050, R.C.M. 1921; Cal. Civ. C. Sec. 2511; re-en. Sec. 8050, R.C.M. 1935; R.C.M. 1947, 63-1001.

35-13-102. Express agreement not necessary to formation. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: En. Sec. 3351, Civ. C. 1895; re-en. Sec. 5536, Rev. C. 1907; re-en. Sec. 8051, R.C.M. 1921; Cal. Civ. C. Sec. 2512; re-en. Sec. 8051, R.C.M. 1935; R.C.M. 1947, 63-1002.

Part 2

Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding. No member of a mining partnership or other agent or manager thereof can by a contract in writing bind the partnership, except by express authority derived from the members thereof.

History: En. Sec. 3358, Civ. C. 1895; re-en. Sec. 5543, Rev. C. 1907; re-en. Sec. 8058, R.C.M. 1921; Cal. Civ. C. Sec. 2519; re-en. Sec. 8058, R.C.M. 1935; R.C.M. 1947, 63-1009.

35-13-202. Owners of majority interest govern. The decision of the members owning a majority of the shares or interest in a mining partnership binds it in the conduct of its business.

History: En. Sec. 3359, Civ. C. 1895; re-en. Sec. 5544, Rev. C. 1907; re-en. Sec. 8059, R.C.M. 1921; Cal. Civ. C. Sec. 2520; re-en. Sec. 8059, R.C.M. 1935; R.C.M. 1947, 63-1010.

35-13-203. Mine — partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: En. Sec. 3354, Civ. C. 1895; re-en. Sec. 5539, Rev. C. 1907; re-en. Sec. 8054, R.C.M. 1921; Cal. Civ. C. Sec. 2515; re-en. Sec. 8054, R.C.M. 1935; R.C.M. 1947, 63-1005.

35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

History: **En. Sec. 3352, Civ. C. 1895; re-en. Sec. 5537, Rev. C. 1907; re-en. Sec. 8052, R.C.M. 1921; Cal. Civ. C. Sec. 2513; re-en. Sec. 8052, R.C.M. 1935; R.C.M. 1947, 63-1003.**

35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof and for money advanced by him for its uses. This lien exists notwithstanding there is an agreement among the partners that it must not.

History: **En. Sec. 3353, Civ. C. 1895; re-en. Sec. 5538, Rev. C. 1907; re-en. Sec. 8053, R.C.M. 1921; Cal. Civ. C. Sec. 2514; re-en. Sec. 8053, R.C.M. 1935; R.C.M. 1947, 63-1004.**

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser from the date of his purchase becomes a member of the partnership.

History: **En. Sec. 3355, Civ. C. 1895; re-en. Sec. 5540, Rev. C. 1907; re-en. Sec. 8055, R.C.M. 1921; Cal. Civ. C. Sec. 2516; re-en. Sec. 8055, R.C.M. 1935; R.C.M. 1947, 63-1006.**

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof or advances made for the benefit of the partnership unless he purchased in good faith for a valuable consideration without notice of such lien.

History: **En. Sec. 3356, Civ. C. 1895; re-en. Sec. 5541, Rev. C. 1907; re-en. Sec. 8056, R.C.M. 1921; Cal. Civ. C. Sec. 2517; re-en. Sec. 8056, R.C.M. 1935; R.C.M. 1947, 63-1007.**

35-13-208. When purchaser takes with notice of liens. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: **En. Sec. 3357, Civ. C. 1895; re-en. Sec. 5542, Rev. C. 1907; re-en. Sec. 8057, R.C.M. 1921; Cal. Civ. C. Sec. 2518; re-en. Sec. 8057, R.C.M. 1935; R.C.M. 1947, 63-1008.**

CHAPTER 14

RESERVED

CHAPTER 15

COOPERATIVE ASSOCIATIONS

Part 1 — General

Section
35-15-101. Reserved power of regulation.
35-15-102. Requirements of chapter exclusive.

35-15-103. Powers.

Part 2 — Formation—Articles of Incorporation—Bylaws

35-15-201. Incorporation.
35-15-202. Limit on subscription or control of common stock — one share per person.
35-15-203. First meeting.
35-15-204. Issuance of certificate of organization — effect.
35-15-205. Amendment of articles of incorporation.
35-15-206. Bylaws.

Part 3 — Shareholders, Directors, and Officers

35-15-301. Increase of membership.
35-15-302. Stockholders' meetings — place — time — call — notice — quorum.
35-15-303. Stockholder voting by mail.
35-15-304. Directors and officers.
35-15-305. Filing required to have benefit of certain provisions.

Part 4 — Shares, Dividends, and Distributions

35-15-401. Classes of stock.
35-15-402. Forfeiture of stock for nonpayment — reissuance.
35-15-403. Assignment of stock.
35-15-404. Share exempt from attachment and execution — sale upon death of member.
Sections 35-15-405 through 35-15-410 reserved.
35-15-411. Disposal of earnings — dividends — reserve fund — educational fund.
35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years.

Part 5 — Merger, Consolidation, and Sale of Assets

35-15-501. Merger or consolidation authorized.
35-15-502. Plan for merger or consolidation.
35-15-503. Meeting to consider plan — notice.
35-15-504. Filing of documents of merger or consolidation — effective date.
35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired.
35-15-506. Sale or disposition of assets.
35-15-507. Statute of limitations.

Part 1

General

35-15-101. Reserved power of regulation. The legislature hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this chapter as it may deem advisable. Such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

History: En. Sec. 880, Civ. C. 1895; re-en. Sec. 4220, Rev. C. 1907; re-en. Sec. 6385, R.C.M. 1921; re-en. Sec. 6385, R.C.M. 1935; R.C.M. 1947, 14-211.

35-15-102. Requirements of chapter exclusive. No association organized under this chapter shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

History: **En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part).**

35-15-103. Powers. (1) Associations formed under this chapter shall be bodies corporate and politic for the period for which they are organized, not exceeding 40 years.

(2) Associations formed under this chapter may:

(a) sue and be sued;

(b) have a common seal which they may alter or renew at pleasure;

(c) own, possess, and enjoy so much real and personal property as shall be necessary for the transaction of their business and sell and dispose of the same; and

(d) borrow money and pledge their property, both real and personal, to secure the payment thereof.

(3) Associations formed under this chapter shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed and such as are usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this chapter.

History: **En. Sec. 874, Civ. C. 1895; re-en. Sec. 4214, Rev. C. 1907; re-en. Sec. 6379, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6379, R.C.M. 1935; R.C.M. 1947, 14-205.**

Part 2

Formation — Articles of Incorporation — Bylaws

35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands, duly acknowledged by a notary public, in the manner provided for the acknowledgment of deeds, setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20.

History: **En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6375, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961; R.C.M. 1947, 14-201.**

35-15-202. Limit on subscription or control of common stock — one share per person. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

History: En. Sec. 871, Civ. C. 1895; re-en. Sec. 4211, Rev. C. 1907; re-en. Sec. 6376, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1933; re-en. Sec. 6376, R.C.M. 1935; R.C.M. 1947, 14-202.

35-15-203. First meeting. As soon as 10 or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given to each subscriber by depositing same in the post office, properly addressed, at least 10 days before the time fixed, stating the object, time, and place of said meeting.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(part).

35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

(2) Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part).

35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed and acknowledged on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part).

35-15-206. Bylaws. All bylaws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon or as otherwise provided in the bylaws. Amendments of the bylaws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; R.C.M. 1947, 14-206(part).

Part 3

Shareholders, Directors, and Officers

35-15-301. Increase of membership. An association licensed to operate under this chapter may, by a majority of its stockholders, increase its membership in such manner as may be provided in its bylaws, not inconsistent with any of the provisions of this chapter.

History: En. Sec. 879, Civ. C. 1895; re-en. Sec. 4219, Rev. C. 1907; re-en. Sec. 6384, R.C.M. 1921; re-en. Sec. 6384, R.C.M. 1935; R.C.M. 1947, 14-210.

35-15-302. Stockholders' meetings — place — time — call — notice — quorum. (1) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(2) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at such meeting.

(4) Written notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(6) A quorum at a regular or special meeting shall be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any additional stockholders present in person shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(2).

35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing, provided he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to the vote so mailed by him.

History: **En. Sec. 1, Ch. 83, L. 1915; re-en. Sec. 6386, R.C.M. 1921; re-en. Sec. 6386, R.C.M. 1935; R.C.M. 1947, 14-212.**

35-15-304. Directors and officers. (1) Directors of associations organized under this chapter shall be elected by the stockholders and hold their office for such period of time as shall be provided in the bylaws.

(2) The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three as fixed by the bylaws of the association.

(3) The officers of the association shall be a president, vice-president, secretary, and treasurer, and such others as may be designated by the bylaws to be elected by the stockholders or by the board of directors, as provided by the bylaws.

(4) Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer.

(5) The bylaws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the bylaws may specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections be held in each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association.

History: **(1)En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; Sec. 14-203, R.C.M. 1947; (2) thru (5)En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; Sec. 14-206, R.C.M. 1947; R.C.M. 1947, 14-203(part), 14-206(part).**

35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions.

History: **En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part).**

Part 4

Shares, Dividends, and Distributions

35-15-401. Classes of stock. (1) The shares of stock shall not be less than $10 or more than $5,000 per share and may be made payable in installments.

(2) Every cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock shall have no voting power and shall not participate in the management and affairs of the association, and the owners thereof shall share in the profits of the association to the extent of not exceeding 6% per annum on the par value thereof. The common stock may be divided into classes of different values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares. However, the owners of common stock in the different classes shall have the same power and vote in the association.

(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-402. Forfeiture of stock for nonpayment — reissuance. Forfeiture of the stock for nonpayment of installments may be provided for in the bylaws, and whenever a share of stock is forfeited, such share shall become the property of the association and may be reissued to any person already a holder of common stock; but any proceeds received by the association from such reissue, over and above the amount due on said share, shall be paid to the delinquent shareholder.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-403. Assignment of stock. No assignment of stock shall be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share but shall remain jointly liable therefor with the assignee.

History: En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R.C.M. 1921; re-en. Sec. 6382, R.C.M. 1935; amd. Sec. 5, Ch. 273, L. 1955; R.C.M. 1947, 14-208.

35-15-404. Share exempt from attachment and execution — sale upon death of member. (1) The share, not exceeding the par value of $500, of each member shall be exempt from seizure on attachment or sale under execution.

(2) Upon his death the share shall be sold by the association and the proceeds after deducting all liabilities to the association shall be delivered to his heirs.

History: En. Sec. 878, Civ. C. 1895; re-en. Sec. 4218, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1909; re-en. Sec. 6383, R.C.M. 1921; re-en. Sec. 6383, R.C.M. 1935; R.C.M. 1947, 14-209.

35-15-405 through 35-15-410 reserved.

35-15-411. Disposal of earnings — dividends — reserve fund — educational fund. The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding 6% per annum on the par value thereof; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

History: En. Sec. 2, Ch. 83, L. 1915; re-en. Sec. 6387, R.C.M. 1921; amd. Sec. 3, Ch. 135, L. 1933; re-en. Sec. 6387, R.C.M. 1935; R.C.M. 1947, 14-213.

35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years. (1) The profits or net earnings of such associations shall be distributed to those entitled thereto at such times as the bylaws shall prescribe, which shall be as often as once in 12 months.

(2) If such associations for 5 consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state for its dissolution. If upon hearing the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

History: En. Sec. 3, Ch. 83, L. 1915; re-en. Sec. 6388, R.C.M. 1921; re-en. Sec. 6388, R.C.M. 1935; R.C.M. 1947, 14-214.

Part 5

Merger, Consolidation, and Sale of Assets

35-15-501. Merger or consolidation authorized. It shall be lawful for two or more cooperative associations formed or which may be hereafter formed under the laws of the state of Montana to merge or consolidate with each other or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(part).

35-15-502. Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(1).

35-15-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(2), (3).

35-15-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(4).

35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(3) Nothing in this part shall be construed to impair the obligation of any contract to which any of such constituents was a party at the date of said consolidation.

History: (1), (2)En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; Sec. 14-216, R.C.M. 1947; (3)En. Sec. 4, Ch. 140, L. 1917; re-en. Sec. 6393, R.C.M. 1921; re-en. Sec. 6393, R.C.M. 1935; Sec. 14-219, R.C.M. 1947; R.C.M. 1947, 14-216(6), 14-219.

35-15-506. Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those entitled to vote thereon voting at the meeting.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(5).

35-15-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the date of filing same.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(7).

CHAPTER 16

AGRICULTURAL ASSOCIATIONS

Part 1 — General

Section

35-16-101. Applicability of general corporate law.
35-16-102. Errors in land description or names not to affect proceedings or jurisdiction of court.
35-16-103. Order of district court final — appeal.

Part 2 — Formation

35-16-201. Who may incorporate — purposes of incorporation.
35-16-202. Petition for incorporation — contents and filing — bond.

35-16-203. Notice of hearing of petition.
35-16-204. Hearing of petition — findings of court — issuance of certificate of incorporation — effect of issuance.
35-16-205. First meeting — notice.
35-16-206. Bylaws to be adopted at first meeting.
35-16-207. Bylaws — contents.
35-16-208. Bylaws — recording and amendment.
35-16-209. Creation of subdivisions or subdistricts.
35-16-210. Existing associations — reorganization under this chapter.
35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy.
35-16-212. Association operating two or more enterprises in different parts of state — control by delegates.

Part 3 — Members and Directors

35-16-301. Members and membership lands.
35-16-302. Procedure for receiving other members.
35-16-303. Withdrawal of membership lands — procedure.
35-16-304. Withdrawal — application to court for order.
Sections 35-16-305 through 35-16-310 reserved.
35-16-311. Meetings — voting — proxies.
35-16-312. Directors — election — term.
35-16-313. Elections — how conducted — voting.
35-16-314. Qualifications of directors — quorum — vacancies.
35-16-315. Directors — number — powers.
35-16-316. Repealed. Sec. 12, Ch. 202, L. 1979.

Part 4 — Corporate Indebtedness

35-16-401. Corporate indebtedness as lien upon membership lands.
35-16-402. Directors' resolution for creation of debt — contents.
35-16-403. Petition to district court for creation of debt.
35-16-404. Notice of hearing of petition — hearing — order of court.
35-16-405. Execution and record of mortgage — lien.
35-16-406. Foreclosure of mortgage — procedure — tax levy.

Part 1

General

35-16-101. Applicability of general corporate law. Except as otherwise herein specifically provided, corporations or districts organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

History: En. Sec. 12, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6425, R.C.M. 1921; re-en. Sec. 6425, R.C.M. 1935; R.C.M. 1947, 14-329.

35-16-102. Errors in land description or names not to affect proceedings or jurisdiction of court. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject matter unless such error or omission shall cause substantial injury.

History: En. Sec. 10, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6423, R.C.M. 1921; re-en. Sec. 6423, R.C.M. 1935; R.C.M. 1947, 14-327.

35-16-103. Order of district court final — appeal. Whenever under the provisions hereof any application is permitted to be made to the district court or appeal allowed thereto, the action of the district court upon such application or appeal shall be final unless appealed from in accordance with Title 25 within 60 days from and after the date of the entry of the order or judgment.

History: En. Sec. 11, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6424, R.C.M. 1921; re-en. Sec. 6424, R.C.M. 1935; R.C.M. 1947, 14-328.

Part 2

Formation

35-16-201. Who may incorporate — purposes of incorporation. At any time after March 5, 1921, any 10 or more holders of title or evidence of title to agricultural, horticultural, or farm lands in this state of an aggregate value of not less than $75,000 who may desire to form a company or district for the purpose of promoting or improving the production, processing, storing, warehousing, or marketing of any or all agricultural, horticultural, or farm or dairying products of the respective petitioners therefor may incorporate themselves into an agricultural corporation or cooperative agricultural district.

History: En. Sec. 1, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6397, R.C.M. 1921; re-en. Sec. 6397, R.C.M. 1935; R.C.M. 1947, 14-301.

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(3) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

History: En. Sec. 2, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6398, R.C.M. 1921; re-en. Sec. 6398, R.C.M. 1935; R.C.M. 1947, 14-302.

35-16-203. Notice of hearing of petition. Upon the filing of such petition, the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than 10 or more than 20 days from the date of filing such petition and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon not less than 10 days before such hearing and post it in three public places in said county.

History: En. Sec. 3, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6399, R.C.M. 1921; re-en. Sec. 6399, R.C.M. 1935; R.C.M. 1947, 14-303.

35-16-204. Hearing of petition — findings of court — issuance of certificate of incorporation — effect of issuance. (1) At the time specified in the notice of hearing, a district judge of the state of Montana shall in open court hear said petition and the evidence offered in support thereof and determine whether or not the requirements of this chapter have been complied with. If upon such hearing or adjournments thereof as the court may order, the court does find that the petition substantially complies with the requirements of this chapter and is true in all particulars, the court shall so find and in open court shall enter upon its minutes and upon said petition or attach thereto its findings and order to the effect that said petition complies with the requirements of this chapter and is true and correct in all particulars as therein set forth and its statements are supported by proper proof and that such corporation or district is entitled to be created and become a body corporate.

(2) A duly certified copy of which petition, with the court's order or any endorsements thereon, shall be filed with the secretary of state of the state of Montana who shall upon such filing issue a certificate of incorporation under the seal of the state of Montana. Duly certified copies of the petition, with the court's order or endorsements thereon, shall also be filed with the county clerk and recorder of each county in which said corporation or district shall thereafter own or hold property or have property-holding memberships.

(3) Upon the issuance of such certificate, every corporation or district organized hereunder is a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

History: En. Sec. 4, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6400, R.C.M. 1921; re-en. Sec. 6400, R.C.M. 1935; R.C.M. 1947, 14-304.

35-16-205. First meeting — notice. Within 30 days after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors or trustees for the first 3 months shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation or district for the purpose of adopting a common seal, adopting bylaws, and providing for the issuance of stock or other evidences of membership of the members thereof and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation or district formed for the purposes named in the petition.

History: En. Sec. 5, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6401, R.C.M. 1921; re-en. Sec. 6401, R.C.M. 1935; R.C.M. 1947, 14-305.

35-16-206. Bylaws to be adopted at first meeting. Every corporation or district formed under this chapter must, by majority action at its organization meeting after incorporation, adopt a code of bylaws for its government, not inconsistent with the constitution and laws of this state.

History: En. Sec. 1, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6406, R.C.M. 1921; re-en. Sec. 6406, R.C.M. 1935; R.C.M. 1947, 14-310.

35-16-207. Bylaws — contents. The bylaws, where no other provision is specially made, may provide for:

(1) the time, place, and manner of calling and conducting meetings of stockholders or members;

(2) the number of stockholders or members or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;

(3) the mode of voting at stockholder's meetings and the method of voting by proxy, provided that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;

(4) the number of directors of the corporation or district and the time of the annual election of directors and the mode and manner of giving notice thereof;

(5) the officers, the manner of their election, their duties, and tenure;

(6) the directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district or any part thereof, as distinguished from membership lands;

(7) the manner of creating subdivisions or subdistricts, by geographical location or otherwise, for local groups or subdivisions of the corporation or district, as may promote the objects of the corporation or district generally or the welfare of the membership in the particular subdivision or subdistrict; and may provide for local boards of directors or executive committees representing the board of directors to manage the affairs of the subdivision or subdistrict thus created, subject to the direction and approval of the board of directors of the corporation or district.

History: En. Sec. 2, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6407, R.C.M. 1921; re-en. Sec. 6407, R.C.M. 1935; R.C.M. 1947, 14-311.

35-16-208. Bylaws — recording and amendment. (1) The bylaws and all amendments and additions thereto shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and

amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent, be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members.

History: En. Sec. 3, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6408, R.C.M. 1921; re-en. Sec. 6408, R.C.M. 1935; amd. Sec. 8, Ch. 62, L. 1977; R.C.M. 1947, 14-312.

35-16-209. Creation of subdivisions or subdistricts. Any corporation or district organized under the provisions hereof shall have the power to create subdivisions or subdistricts of said corporation or district, by geographical or other location, as shall best subserve the purposes of the corporation or district or the welfare of the membership of the corporation or district residing in the proposed subdivision or subdistrict, provided any property owned or acquired by the subdivision or subdistrict thus created shall at all times be the property of the corporation or district and its members and membership lands subject to the objects, purposes, and liabilities of the corporation or district, as herein provided.

History: En. Sec. 8, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6404, R.C.M. 1921; re-en. Sec. 6404, R.C.M. 1935; R.C.M. 1947, 14-308.

35-16-210. Existing associations — reorganization under this chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions hereof desiring to come within the provisions hereof may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize a corporation or district under the provisions hereof and request 10 or more of their members qualified as herein provided for to prepare and file, in such county as they shall select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If thereafter not less than two-thirds of the stockholders or members as such of such cooperative or other corporation, association, society, or group of individuals shall either file with the corporation or district their written consent to such reorganization or petition to become members thereof, in accordance with the provisions hereof, or both, the board of directors or other governing board of such existing cooperative or other corporation, association, society, or group of individuals shall be authorized to through proper officers transfer to such new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions hereof, consenting to such reorganization but not including lands therein, shall be entitled to a certificate or shares of stock or other evidence of membership in such reorganized corporation or district of the par value equal to the value of his certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of such reorganization and shall be to this extent a stockholder or member; provided any stockholder or member of the corporation or group of individuals that are reorganizing shall not be

considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission.

History: En. Sec. 8, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6421, R.C.M. 1921; re-en. Sec. 6421, R.C.M. 1935; R.C.M. 1947, 14-325.

35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy. In the event any stockholder or member of such existing cooperative or other corporation, association, society, or group of individuals shall decline to consent to such transfer or refuse to become a member of such new organization, he must, within 30 days from and after receiving written notice of the transfer of said assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business his petition praying for the net value of his equity as a stockholder or member in said cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the said property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified herein, file such claim for appraisal and settlement, it shall be forever barred.

History: En. Sec. 9, Art. 3, Ch. 152. L. 1921; re-en. Sec. 6422, R.C.M. 1921; re-en. Sec. 6422, R.C.M. 1935; R.C.M. 1947, 14-326.

35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. (1) Any, either cooperative stock or nonprofit nonstock, agricultural association or company existing on July 1, 1921, or thereafter organized under the laws of Montana may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as "general officers" or "general board of directors".

(b) stockholders or members of such cooperative stock or nonprofit nonstock agricultural associations or companies shall be grouped into locals in such districts as the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members which he represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation.

History: En. Sec. 1, Ch. 93, L. 1921; re-en. Sec. 6426, R.C.M. 1921; re-en. Sec. 6426, R.C.M. 1935; R.C.M. 1947, 14-330; amd. Sec. 11, Ch. 202, L. 1979.

Part 3

Members and Directors

35-16-301. Members and membership lands. The members of a corporation or district organized hereunder shall be called "members". The lands included by such members shall be called "membership lands".

History: En. Sec. 9, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6405, R.C.M. 1921; re-en. Sec. 6405, R.C.M. 1935; R.C.M. 1947, 14-309.

35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions hereof, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm lands within this state to become members thereof, upon such holder of title or evidence of title, in manner and form as may be required by the laws of Montana and the rules of such corporation or district or its bylaws, applying for membership therein to the officers thereof by written application, duly acknowledged:

(a) containing a full, true, and correct description of the lands owned by him and proposed to be contained in said corporation or district;

(b) containing a statement of his desire to become a member thereof and his consent to submit his lands to the provisions hereof and to the administration of said corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the lands so owned by him and proposed to be submitted to said corporation or district, its objects and purposes.

(2) If said application shall be in proper form and the applicant be the holder of title or evidence of title to the lands described and the uses of said land as represented in said petition be similar to the uses of lands already included in said corporation or district, a full, true, and correct copy of his application shall be made and filed in the office of principal place of business of the corporation or district and his original application shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands or the greater portion thereof is situate. He shall thereupon be entitled to evidence of temporary membership, in shares or units of membership, in similar manner as original members thereof and the lands described in the petition shall thereafter be construed to be a part of said corporation or district to all intents and purposes as though originally incorporated therein. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, such new member or stockholder shall be entitled to full membership in such corporation or district.

History: En. Sec. 6, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6402, R.C.M. 1921; re-en. Sec. 6402, R.C.M. 1935; R.C.M. 1947, 14-306.

35-16-303. Withdrawal of membership lands — procedure. Any person holding title or evidence of title to membership lands included in a corporation or district organized under the provisions hereof subsequently desiring to withdraw his lands from such corporation or district may do so upon presenting to the board of directors his verified petition stating that he is the holder of title or evidence of title to membership lands included therein, particularly describing the same with a map or plat thereof, that he is desirous of withdrawing from such corporation or district, and tendering to said board the pro rata amount of liability of his lands for all of the corporation's lawfully created and existing lien liabilities together with his pro rata amount of interest due and to become due upon any such liabilities to the maturity of the same. If the matters and things set forth in said petition shall be true and said petitioner shall deposit with the board his pro rata amount of the liabilities as before herein set out or furnish a receipt for such amount from the mortgage or lien holders holding liens against such lands, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of said lands from incorporation or district and its liabilities. Upon presentation of such release to the mortgage or lien holder claiming a right against said membership lands, they shall furnish their release thereof, which said release or releases may be filed and recorded in any county or counties in which said lands may be situated. The board of directors and corporate assets of the corporation shall be responsible to any mortgage or lien holder and the withdrawee for the payments of such funds on their debt or liability.

History: En. Sec. 6, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6419, R.C.M. 1921; re-en. Sec. 6419, R.C.M. 1935; R.C.M. 1947, 14-323.

35-16-304. Withdrawal — application to court for order. In the event the board of directors shall refuse or fail for a period of 30 days to act upon such petition of withdrawal, the petitioner shall be entitled to apply to the district court in the county wherein said lands or the larger proportion of the same shall be situated for an order of withdrawal, and upon his payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against said corporation or its membership lands of the pro rata amount of his land's liabilities therefor, he shall be entitled to an order of withdrawal and release of his lands from said court. The filing with the clerk and recorder of a duly certified copy of such order permitting withdrawal shall operate to release the membership lands described therein from any liens of the corporation under the provisions hereof.

History: En. Sec. 7, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6420, R.C.M. 1921; re-en. Sec. 6420, R.C.M. 1935; R.C.M. 1947, 14-324.

35-16-305 through 35-16-310 reserved.

35-16-311. Meetings — voting — proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions hereof, each member and each unit of membership in acres, production, or other evidence of membership shall be entitled to vote in person or by proxy. Corporate action at such meeting shall be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any such meeting. Where any subdivision or subdistrict fails to elect such delegate, any individual member may give proxy, provided no person shall be entitled to act as proxy who is not himself a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for not less than 3 years immediately preceding such meeting.

History: En. Sec. 8, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6413, R.C.M. 1921; re-en. Sec. 6413, R.C.M. 1935; R.C.M. 1947, 14-317.

35-16-312. Directors — election — term. Directors must be elected at the annual meeting and may hold office for the term and in the manner as specified in the bylaws.

History: En. Sec. 6, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6411, R.C.M. 1921; re-en. Sec. 6411, R.C.M. 1935; R.C.M. 1947, 14-315.

35-16-313. Elections — how conducted — voting. All elections must be by ballot and every stockholder or member or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state, and the bylaws of the corporation or district.

History: En. Sec. 7, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6412, R.C.M. 1921; re-en. Sec. 6412, R.C.M. 1935; R.C.M. 1947, 14-316.

35-16-314. Qualifications of directors — quorum — vacancies. (1) No person shall be eligible to be a director of any corporation or district organized under the provisions hereof who is not himself a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors shall at all times be necessary for the transaction of business; provided, if the bylaws or board of directors shall provide for an executive committee, a quorum of such committee shall have authority to carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws shall otherwise provide, such vacancy may be filled by appointment by the board of directors.

History: En. Sec. 5, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6410, R.C.M. 1921; re-en. Sec. 6410, R.C.M. 1935; R.C.M. 1947, 14-314.

35-16-315. Directors — number — powers. (1) The corporate or district powers, business, and property of all corporations or districts formed under the provisions hereof must be exercised, conducted, and controlled by a board, which shall never be less than three members. Otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the bylaws with reference thereto.

(2) The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district, or any part thereof, as distinguished from membership lands.

History: En. Sec. 4, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6409, R.C.M. 1921; re-en. Sec. 6409, R.C.M. 1935; R.C.M. 1947, 14-313.

35-16-316. Repealed. Sec. 12, Ch. 202, L. 1979.

Part 4

Corporate Indebtedness

35-16-401. Corporate indebtedness as lien upon membership lands. (1) After the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions of this chapter, all mortgage or bonded indebtedness created by such corporation or district is a first lien upon the membership lands to an extent not to exceed 18% of the taxable value thereof if the land is grazing or agricultural and not to exceed 36% of the taxable value thereof if the land is horticultural or vegetable-producing.

(2) The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district is notice to all subsequent lien claimants that the lands are subject to a first lien. However, nothing in this section may be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned.

History: En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R.C.M. 1921; re-en. Sec. 6403, R.C.M. 1935; amd. Sec. 33, Ch. 566, L. 1977; R.C.M. 1947, 14-307.

35-16-402. Directors' resolution for creation of debt — contents. (1) The board of directors or other officers of a corporation or district organized under the provisions hereof as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof.

(2) When at a meeting of the directors of any corporation or district organized hereunder, of which meeting each director shall have received at least 5 days' written or telegraphic prior notice, it shall be determined to the interests of said corporation or district for the promotion of its objects and business to create an indebtedness of said corporation or district secured by a first lien or mortgage upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, the manner and form of evidencing the same, and any coupons for interest thereon and authorizing, directing, and empowering the executive officers of the corporation or district to, upon the approval of the district court as hereinafter provided for, make, execute, and deliver bonds, notes, coupons, or other evidences of the debt and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

History: En. Sec. 1, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6414, R.C.M. 1921; re-en. Sec. 6414, R.C.M. 1935; R.C.M. 1947, 14-318.

35-16-403. Petition to district court for creation of debt. Upon the passage of such resolution, the executive officers of the corporation or district shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

History: En. Sec. 2, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6415, R.C.M. 1921; re-en. Sec. 6415, R.C.M. 1935; R.C.M. 1947, 14-319.

35-16-404. Notice of hearing of petition — hearing — order of court. (1) Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than 20 or more than 40 days from the date of filing thereof and direct personal notice to be given to such members as are within the state of Montana and by mail to such members without the state and by publication in some newspaper of general circulation in each of the counties in which membership lands to be affected are situated, for not less than 2 weeks prior to the hearing of said petition, which notice shall state:

(a) the name of the corporation or district;

(b) its principal place of business;

(c) the fact that it has applied to a district court (naming and describing the same) for leave to create a bonded indebtedness of the amount prayed for; and

(d) the maximum rate of interest proposed to be paid thereon and time of maturity.

(2) On the day set for the hearing of the petition, the court shall proceed to hear the same and any objections that may be filed to the granting hereof. If upon said hearing the court shall find that:

(a) notice has been given as required by this law and the orders of the court;

(b) the matters and things set forth in said petition are true;

(c) the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation or district for the carrying on of its business and the board of directors have determined that such fund is proper or required for the carrying on of its business; and

(d) the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation or district to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition and the maximum interest to be permitted and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation or district and all of the membership lands in said corporation or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation or district to the extent authorized by the provisions hereof; provided, if a majority as provided for in 35-16-210 shall file written objection to the granting of the petition, the court shall dismiss the proceeding and no similar proceeding shall be filed within 6 months thereafter.

History: En. Sec. 3, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6416, R.C.M. 1921; re-en. Sec. 6416, R.C.M. 1935; R.C.M. 1947, 14-320.

35-16-405. Execution and record of mortgage — lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation or district shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation or district and make, execute, and deliver mortgages and deeds of trust or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation or district or any of the assets of said corporation or district are situated, said mortgage shall be a first lien upon all the lands of said corporation or district and upon all of the membership lands of the individual members as may be included in said corporation or district situated in such county as of the date when such lands became members of such corporation or district, to the extent of the limitation of indebtedness thereon herein provided for.

History: En. Sec. 4, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6417, R.C.M. 1921; re-en. Sec. 6417, R.C.M. 1935; R.C.M. 1947, 14-321.

35-16-406. Foreclosure of mortgage — procedure — tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage or the trustee named in the deed of trust shall be entitled to proceed to foreclose the same in the manner provided for in Title 71, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage or deed of trust as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated ordering and directing the county clerk and recorders of such counties to levy and include, as part of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed 3 years as the court shall in its order direct.

History: En. Sec. 5, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6418, R.C.M. 1921; re-en. Sec. 6418, R.C.M. 1935; R.C.M. 1947, 14-322.

CHAPTER 17

COOPERATIVE AGRICULTURAL MARKETING

Part 1 — General

Section
35-17-101. Short title.
35-17-102. Declaration of policy.
35-17-103. Definitions and associations as nonprofit entities.
35-17-104. Who may organize.
35-17-105. Permissible purposes for organization.
35-17-106. Powers of associations.

Part 2 — Formation

35-17-201. Marketing survey.
35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence.
35-17-203. Amendments to articles of incorporation.
35-17-204. Adoption of chapter by existing associations.
35-17-205. Fees for filing articles and amendments thereto.
35-17-206. Bylaws.

Part 3 — Operation—Members, Directors, and Officers

35-17-301. Who may be members.
35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association.
35-17-303. Limited liability of members.
35-17-304. Withdrawal or expulsion of member.
35-17-305. Meetings of members — general and special — how called — notice — one vote per member.
Sections 35-17-306 through 35-17-310 reserved.
35-17-311. Directors — election — compensation — interest in contracts — vacancies.
35-17-312. Officers — election — bank as treasurer.
35-17-313. Removal of officer or director.
35-17-314. Referendum to membership of matters passed by board.
35-17-315. Creation of capital reserve — distribution of net earnings.

Part 4 — Marketing Agreements

35-17-401. Marketing contracts.
35-17-402. Associations exempt from antimonopoly provisions.
35-17-403. Recording marketing agreements.
35-17-404. Requisites for filing.
35-17-405. Place of filing.
35-17-406. Recording as notice.
35-17-407. When transfer of title effected on recording — lien not to extend to subsequent product.
35-17-408. Assignment of agreement as security for loans.
35-17-409. Fees of county clerk.
35-17-410. Agreements and arrangements with other associations.

Part 5 — Merger, Consolidation, and Sale of Assets

35-17-501. Merger or consolidation authorized.
35-17-502. Plan of merger or consolidation.
35-17-503. Meeting to consider plan — notice.
35-17-504. Filing of documents of merger or consolidation — effective date.
35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired.

35-17-506. Sale or disposition of assets.
35-17-507. Statute of limitations.

Part 1

General

35-17-101. Short title. This chapter shall be referred to as the "Cooperative Marketing Act".

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

35-17-102. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste and to make the distribution of agricultural products as direct as can efficiently be done between producer and consumer, to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this chapter is passed.

History: En. Sec. 1, Ch. 233, L. 1921; re-en. Sec. 6428, R.C.M. 1921; re-en. Sec. 6428, R.C.M. 1935; R.C.M. 1947, 14-401.

35-17-103. Definitions and associations as nonprofit entities. (1) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(2) The term "association" means any corporation organized under this chapter.

(3) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(4) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

(5) Associations organized hereunder shall be deemed nonprofit inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

35-17-104. Who may organize. Five or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this chapter.

History: En. Sec. 3, Ch. 233, L. 1921; re-en. Sec. 6430, R.C.M. 1921; re-en. Sec. 6430, R.C.M. 1935; R.C.M. 1947 14-403.

35-17-105. Permissible purposes for organization. An association may be organized to engage in:

(1) any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the by-products thereof;

(2) any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies;

(3) the financing of the above-enumerated activities; or

(4) any one or more of the activities specified herein.

History: En. Sec. 4, Ch. 233, L. 1921; re-en. Sec. 6431, R.C.M. 1921; re-en. Sec. 6431, R.C.M. 1935; R.C.M. 1947, 14-404.

35-17-106. Powers of associations. Each association incorporated under this chapter shall have the following powers:

(1) to engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the by-products thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment or in the financing of any such activities or in any one or more of the activities specified in this section. No association shall handle the agricultural products of nonmembers in greater volume than that of members.

(2) to borrow money and to make advances to members;

(3) to act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) to purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;

(5) to establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(6) to buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

(7) to do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this chapter, and to do any such thing anywhere.

History: En. Sec. 6, Ch. 233, L. 1921; re-en. Sec. 6433, R.C.M. 1921; amd. Sec. 1, Ch. 109, L. 1933; re-en. Sec. 6433, R.C.M. 1935; R.C.M. 1947, 14-406.

Part 2

Formation

35-17-201. Marketing survey. Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the dean of the state agricultural college who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History: En. Sec. 5, Ch. 233, L. 1921; re-en. Sec. 6432, R.C.M. 1921; re-en. Sec. 6432, R.C.M. 1935; R.C.M. 1947, 14-405.

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13 and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances and shall be filed in accordance with the provisions of the general corporation law of this state and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association.

History: En. Sec. 8, Ch. 233, L. 1921; re-en. Sec. 6435, R.C.M. 1921; re-en. Sec. 6435, R.C.M. 1935; amd. Sec. 1, Ch. 298, L. 1977; R.C.M. 1947, 14-408.

35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A statement setting forth the amendment shall be executed and acknowledged on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located.

History: En. Sec. 9, Ch. 233, L. 1921; re-en. Sec. 6436, R.C.M. 1921; re-en. Sec. 6436, R.C.M. 1935; amd. Sec. 2, Ch. 298, L. 1977; R.C.M. 1947, 14-409.

35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the corporation commissioners, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History: En. Sec. 20, Ch. 233, L. 1921; re-en. Sec. 6447, R.C.M. 1921; re-en. Sec. 6447, R.C.M. 1935; R.C.M. 1947, 14-420.

35-17-205. Fees for filing articles and amendments thereto. For filing articles of incorporation and receiving a certificate of incorporation, an association organized hereunder shall pay to the secretary of state $40 and for filing an amendment to the articles and receiving a certificate of amendment, $10.

History: En. Sec. 22, Ch. 233, L. 1921; re-en. Sec. 6449, R.C.M. 1921; re-en. Sec. 6449, R.C.M. 1935; amd. Sec. 4, Ch. 117, L. 1961; R.C.M. 1947, 14-422.

35-17-206. Bylaws. (1) Each association incorporated under this chapter must, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt such bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders voting thereon.

(2) Each association under its bylaws may also provide for any or all of the following matters:

(a) the time, place, and manner of calling and conducting its meetings;

(b) the number of stockholders or members constituting a quorum;

(c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of such votes;

(d) the number of directors constituting a quorum;

(e) the qualifications, compensation, duties, and term of office of directors and officers, time of their election, and the mode and manner of giving notice thereof;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the same, and the purposes for which they may be used;

(h) the amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and the shares of common stock; the conditions upon which and the time when membership of any member shall cease;

(j) the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his membership or, at the option of the association, by conclusive appraisal by the board of directors.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

Part 3

Operation — Members, Directors, and Officers

35-17-301. Who may be members. (1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue common stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof duly authorized in writing.

(3) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

History: En. Sec. 7, Ch. 233, L. 1921; re-en. Sec. 6434, R.C.M. 1921; re-en. Sec. 6434, R.C.M. 1935; R.C.M. 1947, 14-407.

35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association. (1) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(2) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

(3) No stockholder of a cooperative association shall own more than one-twentieth of the issued common stock of the association, and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock.

(4) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(5) The association may at any time, except when the debt of the association exceeds 50% of the assets thereof, buy in or purchase its common stock

at book value thereof as conclusively determined by the board of directors and pay for it in cash within 1 year thereafter.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

35-17-303. Limited liability of members. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

35-17-304. Withdrawal or expulsion of member. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within 1 year after such expulsion or withdrawal.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

35-17-305. Meetings of members — general and special — how called — notice — one vote per member. (1) In its bylaws each association shall provide for one or more regular meetings annually.

(2) The board of directors shall have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors.

(3) Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least 10 days prior to the meeting. However, the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

(4) No member or stockholder shall be entitled to more than one vote.

History: (1) thru (3)En. Sec. 11, Ch. 233, L. 1921; re-en. Sec. 6438, R.C.M. 1921; re-en. Sec. 6438, R.C.M. 1935; Sec. 14-411, R.C.M. 1947; (4)En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; Sec. 14-414, R.C.M. 1947; R.C.M. 1947, 14-411, 14-414(part).

35-17-306 through 35-17-310 reserved.

35-17-311. Directors — election — compensation — interest in contracts — vacancies. (1) The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) No director during the term of his office shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History: En. Sec. 12, Ch. 233, L. 1921; re-en. Sec. 6439, R.C.M. 1921; re-en. Sec. 6439, R.C.M. 1935; R.C.M. 1947, 14-412.

35-17-312. Officers — election — bank as treasurer. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

History: En. Sec. 13, Ch. 233, L. 1921; re-en. Sec. 6440, R.C.M. 1921; re-en. Sec. 6440, R.C.M. 1935; R.C.M. 1947, 14-413.

35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against him shall have the same opportunity.

(2) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

History: En. Sec. 15, Ch. 233, L. 1921; re-en. Sec. 6442, R.C.M. 1921; re-en. Sec. 6442, R.C.M. 1935; R.C.M. 1947, 14-415.

35-17-314. Referendum to membership of matters passed by board. Upon demand of 40% of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. However, a special meeting may be called for the purpose.

History: En. Sec. 16, Ch. 233, L. 1921; re-en. Sec. 6443, R.C.M. 1921; re-en. Sec. 6443, R.C.M. 1935; R.C.M. 1947, 14-416.

35-17-315. Creation of capital reserve — distribution of net earnings. (1) An association organized under this chapter may set aside such part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to such capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which shall be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(2) Net earnings in excess of any such deductions shall be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in cash, credits, stock, revolving fund certificates, other certificates, or securities of the association or of other associations, or in any combination thereof.

History: En. 14-430 by Sec. 4, Ch. 298, L. 1977; R.C.M. 1947, 14-430.

Part 4

Marketing Agreements

35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title thereto and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and any such provisions shall be valid and enforceable in the courts of this state.

(3) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History: En. Sec. 17, Ch. 233, L. 1921; re-en. Sec. 6444, R.C.M. 1921; re-en. Sec. 6444, R.C.M. 1935; R.C.M. 1947, 14-417.

35-17-402. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this chapter shall not be deemed to be a conspiracy, a combination in restraint of trade, or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily.

History: En. 14-417.1 by Sec. 1, Ch. 467, L. 1973; R.C.M. 1947, 14-417.1.

35-17-403. Recording marketing agreements. Any cooperative marketing association organized under the laws of this state or doing business in this state pursuant to the laws of this state may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

History: En. Sec. 1, Ch. 34, L. 1927; re-en. Sec. 6449.1, R.C.M. 1935; R.C.M. 1947, 14-423.

35-17-404. Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer or without any affidavit of good faith or other formality but shall be signed by the member of the association and in the name of the association by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

History: En. Sec. 2, Ch. 34, L. 1927; re-en. Sec. 6449.2, R.C.M. 1935; R.C.M. 1947, 14-424.

35-17-405. Place of filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

History: En. Sec. 3, Ch. 34, L. 1927; re-en. Sec. 6449.3, R.C.M. 1935; R.C.M. 1947, 14-425.

35-17-406. Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this part.

History: En. Sec. 4, Ch. 34, L. 1927; re-en. Sec. 6449.4, R.C.M. 1935; R.C.M. 1947, 14-426.

35-17-407. When transfer of title effected on recording — lien not to extend to subsequent product. (1) In case such marketing agreement specifies that the member has agreed to sell and the association has agreed to buy the product specified in the agreement, produced by or for such member during a period of time in said agreement designated, and such agreement further provides that the association shall have the absolute title to such product and the right to enforce specific performance of the agreement and the power to borrow money thereon for any purpose of the association and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association.

(2) Such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

History: En. Sec. 5, Ch. 34, L. 1927; re-en. Sec. 6449.5, R.C.M. 1935; R.C.M. 1947, 14-427.

35-17-408. Assignment of agreement as security for loans. Such association shall have full power to transfer and assign all of its rights under such cooperative marketing agreement, containing the provisions specified in 35-17-407, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record or may be made by separate document which shall adequately describe the marketing agreement or the various agreements covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of cooperative agreements. Such assignments need not be acknowledged before a notary public or other officer or contain any affidavit of good faith or other formality but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said cooperative marketing agreements and the provisions of this part.

History: En. Sec. 6, Ch. 34, L. 1927; re-en. Sec. 6449.6, R.C.M. 1935; R.C.M. 1947, 14-428.

35-17-409. Fees of county clerk. (1) The fees payable to the county clerk and recorder shall be as follows:

(a) 50 cents for each agreement so filed for record;

(b) 50 cents for each certificate of prior liens and mortgages;

(c) 50 cents for certifying to copy of marketing agreements so filed for record;

(d) 50 cents for each assignment which is filed separately from the marketing agreement or agreements covered thereby.

(2) The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

History: En. Sec. 7, Ch. 34, L. 1927; re-en. Sec. 6449.7, R.C.M. 1935; R.C.M. 1947, 14-429.

35-17-410. Agreements and arrangements with other associations. Any association may upon resolution adopted by its board of directors enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations formed in this or in any other state for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may by agreement between them unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History: En. Sec. 19, Ch. 233, L. 1921; re-en. Sec. 6446, R.C.M. 1921; re-en. Sec. 6446, R.C.M. 1935; R.C.M. 1947, 14-419.

Part 5

Merger, Consolidation, and Sale of Assets

35-17-501. Merger or consolidation authorized. It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(1).

35-17-502. Plan of merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(2).

35-17-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(3), (4).

35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(5).

35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations which are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation.

(3) No right of any creditor may be impaired by the merger or consolidation without his consent.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(7).

35-17-506. Sale or disposition of assets. At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(6).

35-17-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(8).

CHAPTER 18

RURAL COOPERATIVE UTILITIES

Part 1 — General

Section
35-18-101. Short title.
35-18-102. Definitions.
35-18-103. Construction.
35-18-104. Exemption from jurisdiction of the public service commission.
35-18-105. Permissible purposes for incorporation.
35-18-106. Powers of cooperatives.
35-18-107. Foreign corporations.
35-18-108. Waiver of notice.

Part 2 — Formation—Articles of Incorporation—Bylaws

35-18-201. Name.
35-18-202. Incorporators.
35-18-203. Articles of incorporation.
35-18-204. Amendment of articles of incorporation.
35-18-205. Change of principal office without amendment.
35-18-206. Existing corporations — reorganization under this chapter — articles of conversion.
35-18-207. Bylaws.

Part 3 — Operation—Members, Trustees, and Officers

35-18-301. Members.
35-18-302. Nonliability of members for debts of cooperative.
35-18-303. Meetings of members — general and special — place — notice — quorum — voting.
35-18-304. Initiative by members — approval of trustees not required.
Sections 35-18-305 through 35-18-310 reserved.
35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife.
35-18-312. Trustees — term — quorum — powers.
35-18-313. Voting districts.
35-18-314. Officers.
35-18-315. Authority to take acknowledgments — officer, trustee, or member.
35-18-316. Refunds to members.
35-18-317. Disposition or encumbrance of property.

Part 4 — Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger.
35-18-402. Procedure for consolidation.
35-18-403. Effect of merger or consolidation.
35-18-404. Dissolution of cooperative which has not commenced business.
35-18-405. Dissolution and winding up of cooperative which has commenced business.

Part 5 — Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk.
35-18-502. Fees to be charged by secretary of state.
35-18-503. Annual fee to department of revenue — exemption from other taxes.

Part 1

General

35-18-101. Short title. This chapter may be cited as the "Rural Electric and Telephone Cooperative Act".

History: En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957; R.C.M. 1947, 14-501.

35-18-102. Definitions. (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".

(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971; "rural area", as applied to all corporations organized under the provisions of 35-18-105(2), means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of 1,500 persons.

History: **(1)En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; Sec. 14-502, R.C.M. 1947; (2)En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971; Sec. 14-530, R.C.M. 1947; R.C.M. 1947, 14-502(part), 14-530; amd. Sec. 1, Ch. 237, L. 1979.**

35-18-103. Construction. This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History: **En. Sec. 31, Ch. 172, L. 1939; R.C.M. 1947, 14-531.**

35-18-104. Exemption from jurisdiction of the public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter shall be exempt in all respects from the jurisdiction and control of the public service commission of this state.

History: **En. Sec. 29, Ch. 172, L. 1939; R.C.M. 1947, 14-529.**

35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter for the following purposes:

(1) for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this chapter;

(2) for the purposes of making generally available in rural areas adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of rural users thereof, provided that nonduplication of lines, facilities, or systems providing reasonably adequate service will result therefrom.

History: **En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; R.C.M. 1947, 14-502(part); amd. Sec. 2, Ch. 237, L. 1979.**

Compiler's Comments

Effective date. Sec. 4, Ch. 237, L. 1979, provided: "This act is effective on passage and approval." Approved March 22, 1979.

35-18-106. Powers of cooperatives. A cooperative shall have power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock therein;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness therefor and secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise any or all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist such persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems in rural areas and construct, acquire, operate, and furnish such additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof, provided that no duplication of lines, facilities, or systems providing reasonably adequate service will result therefrom;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises for telephone service and installing therein telephone fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(14) do and perform any and all other acts and things and have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957; R.C.M. 1947, 14-503; amd. Sec. 3, Ch. 237, L. 1979.

35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in such state shall be permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice-president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered or certified mail to such corporation at the address thereof specified in such instrument.

(3) Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts.

(4) Any such foreign corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the revenues and income to be derived therefrom.

History: **En. Sec. 26, Ch. 172, L. 1939; R.C.M. 1947, 14-526.**

35-18-108. Waiver of notice. (1) Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice.

(2) If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: **En. Sec. 24, Ch. 172, L. 1939; R.C.M. 1947, 14-524.**

Part 2

Formation — Articles of Incorporation — Bylaws

35-18-201. Name. (1) The name of each cooperative shall include the words "electric" or "telephone" and "cooperative" and the abbreviation "Inc."; provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name.

(2) The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of or authorized to transact business in this state.

(3) The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History: **En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957; R.C.M. 1947, 14-504.**

35-18-202. Incorporators. Five or more natural persons or two or more cooperatives may organize a cooperative in the manner hereinafter provided.

History: **En. Sec. 5, Ch. 172, L. 1939; R.C.M. 1947, 14-505.**

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed and acknowledged by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(3) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

History: En. Sec. 6, Ch. 172, L. 1939; R.C.M. 1947, 14-506.

35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(a).

35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed and acknowledged by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein.

History: **En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(b).**

35-18-206. Existing corporations — reorganization under this chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary.

The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957; R.C.M. 1947, 14-516.

35-18-207. Bylaws. The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended, or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with the articles of incorporation.

History: En. Sec. 7, Ch. 172, L. 1939; R.C.M. 1947, 14-507.

Part 3

Operation — Members, Trustees, and Officers

35-18-301. Members. (1) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof.

(2) Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(a).

35-18-302. Nonliability of members for debts of cooperative. The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative, and no member shall be liable or responsible for any debts of the cooperative.

History: En. Sec. 22, Ch. 172, L. 1939; R.C.M. 1947, 14-522.

35-18-303. Meetings of members — general and special — place — notice — quorum — voting. (1) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 10% of the members, or by the president.

(3) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(4) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as a proxy for more than three members at any meeting of the members.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(b) thru (g).

35-18-304. Initiative by members — approval of trustees not required. (1) Notwithstanding any other provision of this chapter, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than 10% of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of such petition or, if the date of the next annual meeting of members falls within 90 days after such presentation or if the petition so requests, at such annual meeting.

(2) The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History: En. Sec. 17, Ch. 172, L. 1939; R.C.M. 1947, 14-517.

35-18-305 through 35-18-310 reserved.

35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that a fixed fee and expenses of attendance, if any, may be allowed for attendance at each meeting of the board of trustees.

(3) If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(a), (d).

35-18-312. Trustees — term — quorum — powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(2) A majority of the board of trustees shall constitute a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except such as are conferred upon the members by this chapter or its articles of incorporation or bylaws.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(b), (c), (e).

35-18-313. Voting districts. (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district:

(a) a designated number of trustees shall be elected by the members residing therein;

(b) a designated number of delegates shall be elected by the members residing therein; or

(c) both such trustees and delegates shall be elected by such members.

(2) In any such case the bylaws shall prescribe the manner in which such voting districts and the members thereof and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees.

(3) No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957; R.C.M. 1947, 14-510.

35-18-314. Officers. The officers of a cooperative shall consist of a president, vice-president, secretary, and treasurer who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History: En. Sec. 11, Ch. 172, L. 1939; R.C.M. 1947, 14-511.

35-18-315. Authority to take acknowledgments — officer, trustee, or member. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party by reason of being an officer, director, or member of such cooperative.

History: En. Sec. 25, Ch. 172, L. 1939; R.C.M. 1947, 14-525.

35-18-316. Refunds to members. (1) Revenues of a cooperative for any fiscal year shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year, whenever such revenues exceed the amount thereof necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in such fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

(f) provide a fund, which shall be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

(2) Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History: En. Sec. 20, Ch. 172, L. 1939; R.C.M. 1947, 14-520.

35-18-317. Disposition or encumbrance of property. A cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting. However, notwithstanding anything herein contained or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States. Further, the board may, upon the authorization of a majority of those members of the cooperative voting at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or foreign corporation doing business in this state pursuant to the act under which the cooperative is incorporated.

History: En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971; R.C.M. 1947, 14-521.

Part 4

Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 14, Ch. 172, L. 1939; R.C.M. 1947, 14-514.**

35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved

by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 13, Ch. 172, L. 1939; R.C.M. 1947, 14-513.**

35-18-403. Effect of merger or consolidation. The effect of consolidation or merger shall be as follows:

(1) The several cooperatives parties to the consolidation or merger shall be a single cooperative which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives parties to the consolidation or merger, except the new or surviving cooperative, shall cease.

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging cooperatives. Furthermore, all and every interest of or belonging or due to each of the cooperatives so consolidated or merged shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed, and the title to any real estate or any interest therein under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger.

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged. Any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger.

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative. In the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History: **En. Sec. 15, Ch. 172, L. 1939; R.C.M. 1947, 14-515.**

35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(a).**

35-18-405. Dissolution and winding up of cooperative which has commenced business. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(b).

Part 5

Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided file the articles so presented in the records of his office, and upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(2) The secretary of state immediately upon the filing in his office of any articles pursuant to this chapter shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles.

(3) The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2).

History: **En. Sec. 19, Ch. 172, L. 1939; R.C.M. 1947, 14-519.**

35-18-502. Fees to be charged by secretary of state. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $40;

(2) filing articles of amendment and issuing a certificate of amendment, $10;

(3) filing articles of consolidation or merger and issuing a certificate of consolidation or merger, $10;

(4) filing articles of conversion and issuing a certificate of conversion, $10;

(5) filing certificate of election to dissolve and issuing certificate of election to dissolve, $10;

(6) filing articles of dissolution and issuing certificate of dissolution, $10; and

(7) filing certificate of change of principal office and issuing certificate of change of office, $10.

History: **En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961; R.C.M. 1947, 14-527.**

35-18-503. Annual fee to department of revenue — exemption from other taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each

100 persons or fractions thereof to whom electricity or telephone service is supplied within the state but shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: **En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957; R.C.M. 1947, 14-528.**

CHAPTER 19

RESERVED

CHAPTER 20

CEMETERY ASSOCIATIONS

Part 1 — Formation

Section

35-20-101. Permissible purposes for association — first meeting — election of trustees.
35-20-102. Classification of trustees — staggered terms.
35-20-103. Document of incorporation — contents — filing.
35-20-104. Effect of filing — powers of association — eminent domain.

Part 2 — Operations Generally—Trustees of Association

35-20-201. Local government approval prior to commencing operations.
35-20-202. Bylaws.
35-20-203. Vacancies in membership.
35-20-204. Annual election — time — voting.
35-20-205. Qualifications of trustees — notice of election — vacancies.
35-20-206. Time for election if not held at time fixed in document of incorporation.
35-20-207. Annual report of trustees — duty of county attorney.
35-20-208. Trustees to manage — quorum — officers — bond of treasurer.
35-20-209. Duties of secretary — record of interments.
35-20-210. Record of interments open to public — summary to health officers.
35-20-211. Penalty for failure to keep record.
35-20-212. Authority to acquire land — survey required.
35-20-213. Sale of lots.
35-20-214. Use of proceeds from sale of lots.
35-20-215. Use of gifted property — gratuitous city water.
35-20-216. Inalienability of lots.
35-20-217. Exemption from taxation and execution — no road construction through cemetery.

Part 3 — Permanent Care and Improvement Fund Trustees of Fund

35-20-301. Fund required.
35-20-302. Trustees of fund — appointment by district court — qualifications — powers.
35-20-303. Trustees of fund — term.
35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer.
35-20-305. Vacancies — how filled.
35-20-306. All powers vest in survivors until vacancy filled — succession to powers.
35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting.
35-20-308. Recording appointments of trustees.
35-20-309. Secretary of board.
35-20-310. Transfer of moneys received by association to trustees of fund.
35-20-311. Principal of fund to be reserved — income to be turned over to treasurer.
35-20-312. Use of income of fund.

35-20-313. Investment of fund.
35-20-314. Compensation of trustees of fund.
35-20-315. Annual report of trustees of fund.

Part 1

Formation

35-20-101. Permissible purposes for association — first meeting — election of trustees. Any number of persons residing in any county in the state of Montana, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they or a majority of them agree upon and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association shall be known and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three or more than nine. Thereupon they may proceed to elect by ballot the number of trustees so determined upon.

History: En. Sec. 1, Ch. 18, L. 1905; re-en. Sec. 4237, Rev. C. 1907; re-en. Sec. 6469, R.C.M. 1921; Cal. Civ. C. Secs. 608-616; re-en. Sec. 6469, R.C.M. 1935; R.C.M. 1947, 9-101.

35-20-102. Classification of trustees — staggered terms. The chairman and secretary of such meeting shall immediately after such election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year; those in the second class, 2 years; and those in the third class, 3 years; but the trustees of each class may be reelected if they possess the qualifications hereinafter mentioned. Such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

History: En. Sec. 2, Ch. 18, L. 1905; re-en. Sec. 4238, Rev. C. 1907; re-en. Sec. 6470, R.C.M. 1921; re-en. Sec. 6470, R.C.M. 1935; R.C.M. 1947, 9-102.

35-20-103. Document of incorporation — contents — filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so

acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

History: En. Sec. 3, Ch. 18, L. 1905; re-en. Sec. 4239, Rev. C. 1907; re-en. Sec. 6471, R.C.M. 1921; re-en. Sec. 6471, R.C.M. 1935; R.C.M. 1947; 9-103.

35-20-104. Effect of filing — powers of association — eminent domain. Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated and shall have the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually and in addition thereto such corporations shall have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead. Such power of eminent domain to be exercised under the provisions of Title 70, chapter 30.

History: En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R.C.M. 1921; re-en. Sec. 6472, R.C.M. 1935; R.C.M. 1947, 9-104.

Part 2

Operations Generally — Trustees of Association

35-20-201. Local government approval prior to commencing operations. Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

History: En. 9-111.1 by Sec. 2, Ch. 98, L. 1974; R.C.M. 1947, 9-111.1.

35-20-202. Bylaws. The trustees of any association incorporated agreeably to the provisions of this chapter may enact bylaws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

History: En. Sec. 5, Ch. 18, L. 1905; re-en. Sec. 4241, Rev. C. 1907; re-en. Sec. 6473, R.C.M. 1921; re-en. Sec. 6473, R.C.M. 1935; R.C.M. 1947, 9-105.

35-20-203. Vacancies in membership. All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this chapter shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees and be eligible to the office of trustee of said incorporation and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

History: En. Sec. 6, Ch. 18, L. 1905; re-en. Sec. 4242, Rev. C. 1907; re-en. Sec. 6474, R.C.M. 1921; re-en. Sec. 6474, R.C.M. 1935; R.C.M. 1947, 9-106.

35-20-204. Annual election — time — voting. (1) The annual election for trustees to supply the place of those whose term of office expires shall be held on the day mentioned in the certificate of incorporation and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for 3 years and until others are chosen to succeed them.

(2) Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot or any person who is named as an associate in said certificate may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

History: En. Sec. 13, Ch. 18, L. 1905; re-en. Sec. 4249, Rev. C. 1907; re-en. Sec. 6481, R.C.M. 1921; re-en. Sec. 6481, R.C.M. 1935; R.C.M. 1947, 9-113.

35-20-205. Qualifications of trustees — notice of election — vacancies. (1) In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation or their successors.

(2) Public notice of every annual election shall be given in such manner as the bylaws of the association prescribe.

(3) The trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected.

History: En. Sec. 14, Ch. 18, L. 1905; re-en. Sec. 4250, Rev. C. 1907; re-en. Sec. 6482, R.C.M. 1921; re-en. Sec. 6482, R.C.M. 1935; R.C.M. 1947, 9-114.

35-20-206. Time for election if not held at time fixed in document of incorporation. If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day not more than 60 days thereafter and shall give public notice of the time and place, at which time the election may be held with like effect as if held on the day fixed in said certificate. The terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the certificate of incorporation.

History: En. Sec. 15, Ch. 18, L. 1905; re-en. Sec. 4251, Rev. C. 1907; re-en. Sec. 6483, R.C.M. 1921; re-en. Sec. 6483, R.C.M. 1935; R.C.M. 1947, 9-115.

35-20-207. Annual report of trustees — duty of county attorney. (1) The trustees at each annual meeting shall make a report in writing, which report shall be signed by at least a majority of the members of such board and shall contain a statement of their doings and of the affairs of the association and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

(2) It is hereby made the duty of the county attorney of the county in which cemetery is situated to act without charge as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers.

History: En. Sec. 16, Ch. 18, L. 1905; re-en. Sec. 4252, Rev. C. 1907; re-en. Sec. 6484, R.C.M. 1921; re-en. Sec. 6484, R.C.M. 1935; amd. Sec. 2, Ch. 98, L. 1939; R.C.M. 1947, 9-116.

35-20-208. Trustees to manage — quorum — officers — bond of treasurer. (1) The affairs and property of the association shall be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of his office.

History: En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R.C.M. 1921; re-en. Sec. 6475, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1977; R.C.M. 1947, 9-107.

35-20-209. Duties of secretary — record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which he shall enter as correctly and carefully as may be the name, age, sex, nativity, and cause of death with date of burial of every person interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased or undertaker as give order for such interment at the time thereof or, in case deceased is a pauper, a stranger, or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

History: En. Sec. 8, Ch. 18, L. 1905; re-en. Sec. 4244, Rev. C. 1907; re-en. Sec. 6476, R.C.M. 1921; re-en. Sec. 6476, R.C.M. 1935; R.C.M. 1947, 9-108.

35-20-210. Record of interments open to public — summary to health officers. (1) Such register or record of interment shall be open to the inspection of the public.

(2) The secretary of every cemetery association shall furnish to the health officers of any corporate town or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

History: En. Sec. 9, Ch. 18, L. 1905; re-en. Sec. 4245, Rev. C. 1907; re-en. Sec. 6477, R.C.M. 1921; re-en. Sec. 6477, R.C.M. 1935; R.C.M. 1947; 9-109.

35-20-211. Penalty for failure to keep record. Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense not exceeding $25.

History: En. Sec. 10, Ch. 18, L. 1905; re-en. Sec. 4246, Rev. C. 1907; re-en. Sec. 6478, R.C.M. 1921; re-en. Sec. 6478, R.C.M. 1935; R.C.M. 1947, 9-110.

35-20-212. Authority to acquire land — survey required. (1) Any association incorporated agreeably to the provisions of this chapter may take by purchase or gift and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead and for purposes necessary or proper thereto.

(2) Such land or such portion thereof as may from time to time be required for that purpose shall be surveyed and divided into lots of such size as the trustees may direct with such avenues, alleys, and walks as the

trustees deem proper. A map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-213. Sale of lots. After such map is filed in the office of the county clerk and recorder as aforesaid, the trustees may sell and convey the lots as designated on such map upon terms and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other and shall be in the corporate name of the association, signed by the president and secretary thereof.

History: En. Sec. 12, Ch. 18, L. 1905; re-en. Sec. 4248, Rev. C. 1907; re-en. Sec. 6480, R.C.M. 1921; re-en. Sec. 6480, R.C.M. 1935; R.C.M. 1947, 9-112.

35-20-214. Use of proceeds from sale of lots. The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in:

(1) the purchase of cemetery grounds and property;

(2) fencing, improving, and embellishing such grounds and avenues leading thereto;

(3) the erection, conduct, repair, or preservation of any structure to be used as a crematory or the creation, maintenance, and operation of a department for the interment of the dead and in defraying the necessary expenses in the management and care thereof and for no other purposes.

History: En. Sec. 17, Ch. 18, L. 1905; re-en. Sec. 4253, Rev. C. 1907; amd. Sec. 1, Ch. 65, L. 1919; re-en. Sec. 6485, R.C.M. 1921; re-en. Sec. 6485, R.C.M. 1935; R.C.M. 1947, 9-117.

35-20-215. Use of gifted property — gratuitous city water. (1) Any association incorporated agreeably to the provisions of this chapter may also take by gift and hold personal property and may sell the same and apply the proceeds thereof to the care, maintenance, and embellishment of said cemetery, but for no other purpose. All real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor.

(2) Any city or town in or near which a cemetery is maintained under the provisions of this chapter may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-216. Inalienability of lots. (1) Whenever the lands of such an association are laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a lot so transferred, that lot from the time of such interment shall forever be inalienable and shall, upon the death of the proprietor, descend to his heirs. However, any one or more of those heirs may release to any other of the heirs his or their interest in the lot. A copy of the release shall be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

(a) a person having an interest in that lot at the time of his decease;
(b) a relative of some person having such interest;
(c) the wife or husband of such a person; or
(d) a relative of such husband or wife.

(2) However, the person or persons in whom the title to such lot or lots or part thereof is vested may at any time sell, convey, and release the lots or parts thereof to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of such conveyance shall be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for such purposes and shall hold and may convey such lots or parts thereof to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This proviso does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance.

History: En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R.C.M. 1921; re-en. Sec. 6487, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1977; R.C.M. 1947, 9-119.

35-20-217. Exemption from taxation and execution — no road construction through cemetery. The cemetery lands and property of any association formed pursuant to this chapter are exempt from all public taxes and assessments and not liable to be sold on execution or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives may hold the same exempt therefrom so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery or any part of the lands held by such association for the purpose aforesaid without the consent of the trustees of such association.

History: En. Sec. 18, Ch. 18, L. 1905; re-en. Sec. 4254, Rev. C. 1907; re-en. Sec. 6486, R.C.M. 1921; re-en. Sec. 6486, R.C.M. 1935; R.C.M. 1947, 9-118.

Part 3

Permanent Care and Improvement Fund Trustees of Fund

35-20-301. Fund required. Any association formed under the provisions of this chapter or any corporation formed before February 16, 1905, under the laws of this state, which shall have established and be maintaining a cemetery, shall provide in the manner set forth in this chapter for the establishment and maintenance of a permanent fund the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

History: En. Sec. 20, Ch. 18, L. 1905; re-en. Sec. 4256, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1909; re-en. Sec. 6488, R.C.M. 1921; re-en. Sec. 6488, R.C.M. 1935; R.C.M. 1947, 9-120.

35-20-302. Trustees of fund — appointment by district court — qualifications — powers. (1) Whenever moneys to the amount of $100 shall have been received by such corporation or association, formed, before or after February 16, 1905, either from the sale of lots or from direct payments of such corporation or association toward such a fund by lot owners or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund. The judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such association. Such trustee or such board shall consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of said association.

(2) Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification as hereinafter provided of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund heretofore appointed by such cemetery associations or district courts shall continue to hold their office as such trustees until terminated in one of the manners in this chapter provided.

(3) The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 21, Ch. 18, L. 1905; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 2, Ch. 128, L. 1909; re-en. Sec. 6489, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1925; re-en. Sec. 6489, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1939; R.C.M. 1947, 9-121.

35-20-303. Trustees of fund — term. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this chapter provided.

History: En. Sec. 22, Ch. 18, L. 1905; re-en. Sec. 4258, Rev. C. 1907; re-en. Sec. 6490, R.C.M. 1921; amd. Sec. 2, Ch. 68, L. 1925; re-en. Sec. 6490, R.C.M. 1935; amd. Sec. 4, Ch. 98, L. 1939; R.C.M. 1947, 9-122.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 ⅓ times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Any failure so to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee within the discretion of the district court. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(5) The trustee or trustees of such fund may deposit such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds, and securities and pay them out or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such moneys, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 23, Ch. 18, L. 1905; re-en. Sec. 4259, Rev. C. 1907; re-en. Sec. 6491, R.C.M. 1921; re-en. Sec. 6491, R.C.M. 1935; amd. Sec. 5, Ch. 98, L. 1939; amd. Sec. 1, Ch. 12, L. 1947; R.C.M. 1947, 9-123.

35-20-305. Vacancies — how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 24, Ch. 18, L. 1905; re-en. Sec. 4260, Rev. C. 1907; re-en. Sec. 6492, R.C.M. 1921; amd. Sec. 3, Ch. 68, L. 1925; re-en. Sec. 6492, R.C.M. 1935; R.C.M. 1947, 9-124.

35-20-306. All powers vest in survivors until vacancy filled — succession to powers. (1) In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once without further act or conveyance vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted.

(2) All newly appointed trustees shall at once upon qualification succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board, and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 25, Ch. 18, L. 1905; re-en. Sec. 4261, Rev. C. 1907; re-en. Sec. 6493, R.C.M. 1921; re-en. Sec. 6493, R.C.M. 1935; R.C.M. 1947, 9-125.

35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting. (1) In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in 35-20-302, or in the case of the death, removal, resignation, or disability of all of the members of such board, the rights, titles, interests, authorities, powers, franchises, and trusts, until the appointment and qualification of a new board of trustees of such fund, shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated.

(2) In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this chapter.

(3) Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(4) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the trust fund shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 26, Ch. 18, L. 1905; re-en. Sec. 4262, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1909; re-en. Sec. 6494, R.C.M. 1921; amd. Sec. 4, Ch. 68, L. 1925; re-en. Sec. 6494, R.C.M. 1935; amd. Sec. 6, Ch. 98, L. 1939; R.C.M. 1947, 9-126.

35-20-308. Recording appointments of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located.

History: En. Sec. 27, Ch. 18, L. 1905; re-en. Sec. 4263, Rev. C. 1907; re-en. Sec. 6495, R.C.M. 1921; re-en. Sec. 6495, R.C.M. 1935; amd. Sec. 7, Ch. 98, L. 1939; R.C.M. 1947, 9-127.

35-20-309. Secretary of board. The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 33, Ch. 18, L. 1905; re-en. Sec. 4269, Rev. C. 1907; re-en. Sec. 6501, R.C.M. 1921; re-en. Sec. 6501, R.C.M. 1935; amd. Sec. 10, Ch. 98, L. 1939; R.C.M. 1947, 9-133.

35-20-310. Transfer of moneys received by association to trustees of fund. (1) From and after February 16, 1905, the trustees of such cemetery association as are mentioned in 35-20-302 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly upon the first days of January, April, July, and October of each year to the trustees of such fund.

(2) If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may by a two-thirds vote appropriate the whole or any portion of such unexpended moneys to such permanent care and improvement fund.

History: En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R.C.M. 1921; re-en. Sec. 6496, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1974; R.C.M. 1947, 9-128.

35-20-311. Principal of fund to be reserved — income to be turned over to treasurer. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on January 1 and July 1 in each year turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: En. Sec. 29, Ch. 18, L. 1905; re-en. Sec. 4265, Rev. C. 1907; re-en. Sec. 6497, R.C.M. 1921; re-en. Sec. 6497, R.C.M. 1935; R.C.M. 1947, 9-129.

35-20-312. Use of income of fund. (1) The income of that portion of such fund received from the sales of lots shall be used in the discretion of the trustees of such association solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided.

(2) The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes for

1 year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

(3) After February 16, 1905, all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of this chapter to the permanent care and improvement fund of such corporation and also such further sum if any there be paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed so to be transferred as hereinbefore provided.

History: En. Sec. 30, Ch. 18, L. 1905; re-en. Sec. 4266, Rev. C. 1907; amd. Sec. 5, Ch. 128, L. 1909; re-en. Sec. 6498, R.C.M. 1921; re-en. Sec. 6498, R.C.M. 1935; R.C.M. 1947, 9-130.

35-20-313. Investment of fund. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-211 and not otherwise. Each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

History: En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R.C.M. 1921; re-en. Sec. 6499, R.C.M. 1935; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974; R.C.M. 1947, 9-131.

35-20-314. Compensation of trustees of fund. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach $10,000 and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R.C.M. 1921; re-en. Sec. 6500, R.C.M. 1935; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974; R.C.M. 1947, 9-132.

35-20-315. Annual report of trustees of fund. The trustee or the board of trustees of such fund shall annually on January 1 make their report of the condition of such trust fund to the trustees of the cemetery association and also to the district court as hereinbefore provided. Such reports shall always be kept by the secretary of such association and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 34, Ch. 18, L. 1905; re-en. Sec. 4270, Rev. C. 1907; re-en. Sec. 6502, R.C.M. 1921; re-en. Sec. 6502, R.C.M. 1935; amd. Sec. 11, Ch. 98, L. 1939; R.C.M. 1947, 9-134.

CHAPTER 21

MAUSOLEUM AND COLUMBARIUM AUTHORITIES

Part 1 — General

Section

35-21-101. Short title.
35-21-102. Definitions.

35-21-103. Exemptions and limitations on applicability of chapter.

Part 2 — Organization and Regulation of Business

35-21-201. Incorporation required for transaction of business.
35-21-202. General powers.
35-21-203. Corporate powers enlarged.
35-21-204. Power to establish and operate mausoleum, columbarium, or crematory.
35-21-205. Governing board — number of members.
35-21-206. Office of director or officer violating chapter becomes vacant.
35-21-207. Rulemaking power.
35-21-208. Power to limit use of property.
35-21-209. Regulation of markers, monuments, and structures.
35-21-210. Regulation or prohibition of erection of monuments, markers, and structures.
35-21-211. Regulation of plants or shrubs.
35-21-212. Regulation of interments.
35-21-213. Regulation of personal conduct.
35-21-214. Rules for other purposes.
35-21-215. Rules to be printed or typed — inspection.
35-21-216. Person in charge has authority of police officer.
35-21-217. Power to acquire property.

Part 3 — Disposition and Removal of Remains

35-21-301. Right to control disposition of remains — priorities — liability for cost.
35-21-302. Liability of person signing authorization for interment or cremation.
35-21-303. Authorization exempts mausoleum-columbarium from liability.
35-21-304. Limitation on actions against mausoleum-columbarium — funeral directors and morticians exempt from liability.
35-21-305. Removal of remains — consent required — removal by permission of court.
35-21-306. Notice of application to court for removal.
35-21-307. When removals excepted.

Part 4 — Dedication of Property—Property Rights in Plots

35-21-401. Map or plat to be made.
35-21-402. Filing plat and declaration of dedication.
35-21-403. Dedication complete on filing — tax exemption.
35-21-404. Resurvey — amended map or plat.
35-21-405. Filed plat and recorded declaration as constructive notice.
35-21-406. Effect of dedication.
35-21-407. Encumbrances subordinate to dedication.
35-21-408. Dedication not violative of law against perpetuities.
35-21-409. Public thoroughfare or utility through dedicated property prohibited — consent.
35-21-410. Removal of dedication by order of court.
35-21-411. Notice of hearing on removal of dedication.
35-21-412. Sale of interment plots.
35-21-413. Signature on conveyance.
35-21-414. Separate conveyed plots indivisible.
35-21-415. Selling for resale at profit — misdemeanor.
35-21-416. Commission or rebate for sale — misdemeanor — exception.
35-21-417. Commission or rebate for causing disposition of body in crematory, mausoleum, or columbarium — misdemeanor.
35-21-418. Property interest in plot — owner.
35-21-419. Spouse — vested right of interment.
35-21-420. Right of spouse not divested by conveyance — effect of divorce.
35-21-421. Descent of plot on death of owner when no interment made.
35-21-422. Exemption from inheritance tax.
35-21-423. Affidavit showing death of owner and name of person entitled to plot authorizes use of plot.
35-21-424. When plot becomes inalienable — family plot.
35-21-425. Family plot — persons who may be interred — priorities.
35-21-426. Waiver of right of interment in family plot.

35-21-427. Termination of right of interment upon interment elsewhere.
35-21-428. Conveyance to mausoleum-columbarium authority by plot owner.
35-21-429. Conveyance to joint tenants.
35-21-430. Death of joint tenant — effect.
35-21-431. Affidavit showing death of joint tenant and identity of survivors authorizes use of plot.
35-21-432. Co-owners of plot — representative — authority not liable for interment pursuant to request of any co-owner.
35-21-433. Limitations on vested right of interment.

Part 5 — Records

35-21-501. Record of ownership and transfer of plots required.
35-21-502. Records of interments and cremations required.
35-21-503. Records open to inspection.
35-21-504. Record of casket before cremation — inspection.
35-21-505. Violation a misdemeanor.

Part 6 — Endowment Care and Trust Funds

35-21-601. Authority to establish endowment care fund — commingling for investment.
35-21-602. Principal of funds irreducible.
35-21-603. Investment of funds — use of income.
35-21-604. Permissible investment securities.
35-21-605. Plans for general care — collections from purchasers of plots for fund.
35-21-606. Agreement for care in accordance with plan.
35-21-607. Agreement for endowment care of plot.
35-21-608. Board of trustees of fund.
35-21-609. Directors of mausoleum-columbarium authority as trustees — investments.
35-21-610. Bank or trust company as trustee.
35-21-611. Compensation of trustees.
35-21-612. Annual financial report to be filed with district court.
35-21-613. Gifts for endowment care fund.
35-21-614. Endowment fund and contributions for charitable purposes — validity of contributions.
35-21-615. Endowment care mausoleum-columbarium — amount of deposit required.
35-21-616. Nonendowment care mausoleum-columbarium.
35-21-617. Endowment care mausoleum or columbarium — sign required.
35-21-618. Annual report of endowment care mausoleum or columbarium to be filed in principal office.
35-21-619. Annual revision of report — verification.
35-21-620. Nonendowment care mausoleum or columbarium — sign required.
35-21-621. Violation a misdemeanor.
35-21-622. Acceptance of gifts in trust.
35-21-623. Contributions for charitable purposes — validity of contributions.
35-21-624. Director, officer, or trustee not to borrow funds.
35-21-625. Illegal loan — misdemeanor.
35-21-626. Merchandise trust fund.

Part 7 — Desecration and Vandalism
Regulation of Construction

35-21-701. Removal of remains with intent to sell or dissect — penalty.
35-21-702. Mutilation or removal of remains without authority — penalty.
35-21-703. Attachment or detention of remains — misdemeanor.
35-21-704. Destruction or injury of property — interference with funeral or interment — misdemeanor.
35-21-705. Civil liability — application of recovery.
35-21-706. Exemptions from criminal mischief provisions.
35-21-707. Converted or altered building subject to chapter.
35-21-708. Construction requirements — durability.
35-21-709. Fireproof construction of crematories — exceptions.
35-21-710. Fireproof construction of mausoleums and columbariums.

35-21-711. Construction to comply with city ordinances.
35-21-712. Construction in violation of chapter a public nuisance — penalty.
35-21-713. Violations of chapter a misdemeanor.

Part 1

General

35-21-101. Short title. This chapter shall be known as the "Mausoleum-Columbarium Act".

History: En. Sec. 1, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part).

35-21-102. Definitions. For the purposes of this chapter, certain words used herein shall have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes.

(2) "Cremated remains" means human remains after cremation in a crematory.

(3) "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

(4) "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.

(5) "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb the uncremated human remains.

(6) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

(7) "Entombment" means the placement of human remains in a crypt or vault.

(8) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition and cremated remains.

(9) "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

(10) "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

(11) "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

(12) "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

(13) "Mausoleum business", "columbarium business", and "mausoleum-columbarium business or purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium, interring human remains therein, and the care, preservation, and embellishment of such property.

(14) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

(15) "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but shall not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property including mausoleums and/or columbariums where interment is also made by ground burial.

(16) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

(17) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining crypts or vaults or one or more than one adjoining niches.

(18) "Plot owner" or "owner" or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

(19) "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

(20) "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. Wherever the context shall permit "urn garden" shall be deemed to be included in "columbarium".

History: **En. Secs. 1 thru 19, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part), 9-502 thru 9-519.**

35-21-103. Exemptions and limitations on applicability of chapter. (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium.

(2) No condition or section or provision of this chapter shall or may be so construed or interpreted as to apply to any act or in any way pertain to or affect any Montana mausoleum corporation in existence on July 1, 1949, operating under Montana charter dated prior to the year 1920.

(3) The provisions of this chapter do not affect the corporate existence or rights or powers of any cemetery corporation organized under any law of the state of Montana in which a mausoleum, columbarium, or crematory or combination thereof shall be situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This chapter and all its provisions shall be applicable to and only to mausoleums and/or columbariums owned, operated, or controlled by a mausoleum-columbarium authority organized and governed as herein provided and owning, controlling, or operating lands, buildings, structures, etc., solely for the entombment and inurnment of human remains.

History: **(1), (2)En. Sec. 122, Ch. 35, L. 1949; Sec. 9-1014, R.C.M. 1947; (3)En. Sec. 38, Ch. 35, L. 1949; Sec. 9-703, R.C.M. 1947; R.C.M. 1947, 9-703, 9-1014.**

Part 2

Organization and Regulation of Business

35-21-201. Incorporation required for transaction of business. It is unlawful for any corporation, partnership, firm, trust, association, or individual to engage in or transact any of the businesses of a mausoleum-columbarium within this state except by means of a corporation duly organized for that purpose.

History: **En. Sec. 36, Ch. 35, L. 1949; R.C.M. 1947, 9-701.**

35-21-202. General powers. Unless otherwise limited by the law under which created, mausoleum-columbarium authorities, whether for profit or not for profit, shall, in the conduct of their business, have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitations of general laws as may be required and may secure them by mortgage, deed of trust, or otherwise upon their property. A mausoleum-columbarium authority shall have power to carry on, in connection with its mausoleum-columbarium business and either on the dedicated premises or separately, any business incidental to the burial or preparation for burial of dead human bodies.

History: **En. Sec. 53, Ch. 35, L. 1949; R.C.M. 1947, 9-715.**

35-21-203. Corporate powers enlarged. The powers, privileges, and duties conferred and imposed upon any corporation existing and doing business under the laws of the state are hereby enlarged as each particular case may require to conform to the provisions of this chapter.

History: **En. Sec. 39, Ch. 35, L. 1949; R.C.M. 1947, 9-704.**

35-21-204. Power to establish and operate mausoleum, columbarium, or crematory. Any private corporation organized under the laws of the state of Montana and authorized by its articles so to do may establish, maintain, manage, improve, or operate a mausoleum, columbarium, or crematory or any combination thereof and conduct any or all of the businesses of a mausoleum-columbarium and crematory either for or without profit to its members or stockholders.

History: **En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).**

35-21-205. Governing board — number of members. The governing board of any mausoleum-columbarium authority shall have not less than seven members.

History: **En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).**

35-21-206. Office of director or officer violating chapter becomes vacant. The office of any director or officer who acts or permits action contrary to this chapter immediately thereupon becomes vacant.

History: **En. Sec. 114, Ch. 35, L. 1949; R.C.M. 1947, 9-926.**

35-21-207. Rulemaking power. A mausoleum-columbarium authority may make, adopt, amend, add to, revise, or modify and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum, columbarium, or crematory and for the other purposes specified in 35-21-208 to 35-21-216, inclusive.

History: **En. Sec. 40, Ch. 35, L. 1949; R.C.M. 1947, 9-705.**

35-21-208. Power to limit use of property. It may restrict and limit the use of all property within its mausoleum, columbarium, or crematory.

History: **En. Sec. 41, Ch. 35, L. 1949; R.C.M. 1947, 9-706.**

35-21-209. Regulation of markers, monuments, and structures. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium.

History: **En. Sec. 42, Ch. 35, L. 1949; R.C.M. 1947, 9-707.**

35-21-210. Regulation or prohibition of erection of monuments, markers, and structures. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium or the grounds within which they may be situated.

History: **En. Sec. 43, Ch. 35, L. 1949; R.C.M. 1947, 9-708.**

35-21-211. Regulation of plants or shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium or the grounds within which they may be situated.

History: **En. Sec. 44, Ch. 35, L. 1949; R.C.M. 1947, 9-709.**

35-21-212. Regulation of interments. It may prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules.

History: **En. Sec. 45, Ch. 35, L. 1949; R.C.M. 1947, 9-710.**

35-21-213. Regulation of personal conduct. It may regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds within which the same are situated.

History: **En. Sec. 46, Ch. 35, L. 1949; R.C.M. 1947, 9-711.**

35-21-214. Rules for other purposes. It may make and enforce rules for all other purposes deemed necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum, columbarium, or crematory, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum, columbarium, or crematory is conducted.

History: **En. Sec. 47, Ch. 35, L. 1949; R.C.M. 1947, 9-712.**

35-21-215. Rules to be printed or typed — inspection. The rules made pursuant to 35-21-214 shall be plainly printed or typewritten and maintained subject to inspection in the office of the mausoleum-columbarium authority or in such place or places within the mausoleum or columbarium as the mausoleum-columbarium authority may prescribe.

History: **En. Sec. 48, Ch. 35, L. 1949; R.C.M. 1947, 9-713.**

35-21-216. Person in charge has authority of police officer. The sexton, superintendent, or other person in charge of a mausoleum-columbarium and such other person as the mausoleum-columbarium authority designates has the authority of a police officer for the purpose of maintaining order, enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which he has charge and within such radius as may be necessary to protect the mausoleum-columbarium or crematory property.

History: En. Sec. 49, Ch. 35, L. 1949; R.C.M. 1947, 9-714.

35-21-217. Power to acquire property. Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, crematories, and columbariums within which the interment of the dead may be authorized by law.

History: En. Sec. 55, Ch. 35, L. 1949; R.C.M. 1947, 9-716.

Part 3

Disposition and Removal of Remains

35-21-301. Right to control disposition of remains — priorities — liability for cost. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

(a) the surviving spouse;
(b) the surviving children of the decedent;
(c) the surviving parents of the decedent.

(2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

History: En. Sec. 23, Ch. 35, L. 1949; R.C.M. 1947, 9-601.

35-21-302. Liability of person signing authorization for interment or cremation. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty.

History: En. Sec. 24, Ch. 35, L. 1949; R.C.M. 1947, 9-602.

35-21-303. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring or cremating pursuant to such authorization unless it has actual notice that such representation is untrue.

History: En. Sec. 25, Ch. 35, L. 1949; R.C.M. 1947, 9-603.

35-21-304. Limitation on actions against mausoleum-columbarium — funeral directors and morticians exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed mortician or funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963; R.C.M. 1947, 9-604.

35-21-305. Removal of remains — consent required — removal by permission of court. (1) The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one of the following in the order named:

(a) the surviving spouse;

(b) the surviving children of the decedent;

(c) the surviving parents of the decedent;

(d) the surviving brothers or sisters of the decedent.

(2) If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient, provided that the permission shall not violate the terms of a written contract or the rules of the mausoleum-columbarium authority.

History: En. Sec. 27, Ch. 35, L. 1949; R.C.M. 1947, 9-605.

35-21-306. Notice of application to court for removal. Notice of application to the court for such permission shall be given at least 10 days prior thereto personally, or at least 15 days prior thereto if by mail to the mausoleum-columbarium authority and to the persons not consenting and to every other person on whom service of notice may be required by the court.

History: En. Sec. 28, Ch. 35, L. 1949; R.C.M. 1947, 9-606.

35-21-307. When removals excepted. Sections 35-21-305, 35-21-306 do not apply to or prohibit the removal of any remains from one plot to another in the same dedicated area owned or operated by the same mausoleum-columbarium authority, from a plot for which the purchase price is past due and unpaid, to some other suitable place, nor does it apply to the disinterment of remains upon order of court or coroner.

History: En. Sec. 29, Ch. 35, L. 1949; R.C.M. 1947, 9-607.

Part 4

Dedication of Property — Property Rights in Plots

35-21-401. Map or plat to be made. Every mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens, and other divisions with descriptive names or numbers.

History: En. Sec. 56, Ch. 35, L. 1949; R.C.M. 1947, 9-801.

35-21-402. Filing plat and declaration of dedication. The mausoleum-columbarium authority shall file the map or plat in the office of the clerk and recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county clerk's office a written declaration of dedication of the property delineated on the plat or map dedicating the property exclusively to interment purposes.

History: En. Sec. 57, Ch. 35, L. 1949; R.C.M. 1947, 9-802.

35-21-403. Dedication complete on filing — tax exemption. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property and all mausoleums and columbariums constructed thereon and burial plots located therein shall be held, occupied, and used exclusively for interment purposes and shall be exempt from all state, county, and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

History: En. Sec. 58, Ch. 35, L. 1949; R.C.M. 1947, 9-803.

35-21-404. Resurvey — amended map or plat. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

History: En. Sec. 59, Ch. 35, L. 1949; amd. Sec. 3, Ch. 62, L. 1977; R.C.M. 1947, 9-804.

35-21-405. Filed plat and recorded declaration as constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the property to interment purposes.

History: En. Sec. 60, Ch. 35, L. 1949; R.C.M. 1947, 9-805.

35-21-406. Effect of dedication. After property is dedicated to interment purposes pursuant to 35-21-401 to 35-21-405, inclusive, neither the dedication nor the title of a plot owner shall be affected by the dissolution of the mausoleum-columbarium authority, by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise, except as provided in this chapter.

History: En. Sec. 61, Ch. 35, L. 1949; R.C.M. 1947, 9-806.

35-21-407. Encumbrances subordinate to dedication. All mortgages, deeds of trust, and other liens of any nature contracted, placed, or incurred after July 1, 1949, upon property which has been and was, at the time of the creation or placing of the lien, dedicated as a mausoleum-columbarium pursuant to this chapter or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed, or lien, dedicated to the mausoleum-columbarium purposes pursuant to this chapter shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication, and any and all sales made upon foreclosures are subject and subordinate to the dedication for mausoleum-columbarium purposes.

History: **En. Sec. 54, Ch. 35, L. 1949; R.C.M. 1947, 9-807.**

35-21-408. Dedication not violative of law against perpetuities. Dedication to interment purposes pursuant to this chapter is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

History: **En. Sec. 62, Ch. 35, L. 1949; R.C.M. 1947, 9-808.**

35-21-409. Public thoroughfare or utility through dedicated property prohibited — consent. After dedication pursuant to this chapter and as long as the property remains dedicated to interment purposes, no railroad, street, road, alley, pipeline, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the mausoleum-columbarium authority owning and operating it or of not less than two-thirds of the owners of interment plots therein.

History: **En. Sec. 63, Ch. 35, L. 1949; R.C.M. 1947, 9-809.**

35-21-410. Removal of dedication by order of court. Property dedicated to interment purposes shall be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the district court in the county in which the property is situated in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) that no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed;

(2) that the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

History: **En. Sec. 70, Ch. 35, L. 1949; R.C.M. 1947, 9-816.**

35-21-411. Notice of hearing on removal of dedication. (1) The notice of hearing provided in 35-21-410 shall be given by publication once a week for at least 3 consecutive weeks in a newspaper of general circulation in the county where said mausoleum or columbarium is located and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

(2) Said notice shall:

(a) describe the portion of the mausoleum or columbarium property sought to be removed from dedication;

(b) state that all remains have been removed or that no interments have been made in the portion of the mausoleum or columbarium property sought to be removed from dedication;

(c) specify the time and place of the hearing.

History: **En. Sec. 71, Ch. 35, L. 1949; R.C.M. 1947, 9-817.**

35-21-412. Sale of interment plots. After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots subject to such rules as may be then in effect or thereafter adopted by the mausoleum-columbarium authority and subject to such other and further limitations, conditions, and restrictions as may be inserted in or made a part of the declaration of dedication by reference or included in the instrument of conveyance of such plot.

History: **En. Sec. 64, Ch. 35, L. 1949; R.C.M. 1947, 9-810.**

35-21-413. Signature on conveyance. All conveyances made by a mausoleum-columbarium authority shall be signed by such officer or officers as are authorized by the mausoleum-columbarium authority.

History: **En. Sec. 66, Ch. 35, L. 1949; R.C.M. 1947, 9-812.**

35-21-414. Separate conveyed plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority or as provided by law.

History: **En. Sec. 65, Ch. 35, L. 1949; R.C.M. 1947, 9-811.**

35-21-415. Selling for resale at profit — misdemeanor. It shall be unlawful for any person, firm, or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation, or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: **En. Sec. 67, Ch. 35, L. 1949; R.C.M. 1947, 9-813.**

35-21-416. Commission or rebate for sale — misdemeanor — exception. It shall be unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the authority previously appointed for such purpose. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: **En. Sec. 68, Ch. 35, L. 1949; R.C.M. 1947, 9-814.**

35-21-417. Commission or rebate for causing disposition of body in crematory, mausoleum, or columbarium — misdemeanor. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in 35-21-416, any commission or bonus or rebate or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum, or columbarium is guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: **En. Sec. 69, Ch. 35, L. 1949; R.C.M. 1947, 9-815.**

35-21-418. Property interest in plot — owner. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

History: **En. Sec. 72, Ch. 35, L. 1949; R.C.M. 1947, 9-818.**

35-21-419. Spouse — vested right of interment. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if an interment space therein not subject to the vested right of interment for previous spouses is unoccupied at the time such person becomes the spouse of the owner.

History: **En. Sec. 73, Ch. 35, L. 1949; R.C.M. 1947, 9-819.**

35-21-420. Right of spouse not divested by conveyance — effect of divorce. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

History: **En. Sec. 74, Ch. 35, L. 1949; R.C.M. 1947, 9-820.**

35-21-421. Descent of plot on death of owner when no interment made. If no interment is made in a plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred therein are lawfully removed, the plot descends upon the death of the owner to his heirs-at-law subject to the rights of interment of the decedent and his surviving spouse unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

History: **En. Sec. 75, Ch. 35, L. 1949; R.C.M. 1947, 9-821.**

35-21-422. Exemption from inheritance tax. Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

History: **En. Sec. 76, Ch. 35, L. 1949; R.C.M. 1947, 9-822.**

35-21-423. Affidavit showing death of owner and name of person entitled to plot authorizes use of plot. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to 35-21-418 to 35-21-421, inclusive, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it.

History: **En. Sec. 77, Ch. 35, L. 1949; R.C.M. 1947, 9-823.**

35-21-424. When plot becomes inalienable — family plot. Whenever the remains of the record owner or of a member of his family or of a relative of a member of his family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner shall have died without making disposition of the plot either in his will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

History: **En. Sec. 82, Ch. 35, L. 1949; R.C.M. 1947, 9-828.**

35-21-425. Family plot — persons who may be interred — priorities. (1) In a family plot, one crypt or one niche or interment space therein may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(2) If no parent or child survives, the right of interment goes in the order of death first to the spouse of any child of the record owner, and second in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

History: **En. Secs. 83, 84, Ch. 35, L. 1949; R.C.M. 1947, 9-829, 9-830.**

35-21-426. Waiver of right of interment in family plot. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

History: **En. Sec. 85, Ch. 35, L. 1949; R.C.M. 1947, 9-831.**

35-21-427. Termination of right of interment upon interment elsewhere. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

History: **En. Sec. 86, Ch. 35, L. 1949; R.C.M. 1947, 9-832.**

35-21-428. Conveyance to mausoleum-columbarium authority by plot owner. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

History: **En. Sec. 88, Ch. 35, L. 1949; R.C.M. 1947, 9-834.**

35-21-429. Conveyance to joint tenants. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed.

History: **En. Sec. 78, Ch. 35, L. 1949; R.C.M. 1947, 9-824.**

35-21-430. Death of joint tenant — effect. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

History: **En. Sec. 79, Ch. 35, L. 1949; R.C.M. 1947, 9-825.**

35-21-431. Affidavit showing death of joint tenant and identity of survivors authorizes use of plot. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

History: **En. Sec. 80, Ch. 35, L. 1949; R.C.M. 1947, 9-826.**

35-21-432. Co-owners of plot — representative — authority not liable for interment pursuant to request of any co-owner. When there are several owners of a plot or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of such designation with the mausoleum-columbarium authority. In the absence of such notice or of written objection to its so doing, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

History: **En. Sec. 81, Ch. 35, L. 1949; R.C.M. 1947, 9-827.**

35-21-433. Limitations on vested right of interment. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

History: **En. Sec. 87, Ch. 35, L. 1949; R.C.M. 1947, 9-833.**

Part 5

Records

35-21-501. Record of ownership and transfer of plots required. A record shall be kept of the ownership of all plots in the mausoleum and columbarium which have been conveyed by the mausoleum-columbarium authority and of all transfers of plots therein. No transfer of any plot, heretofore or hereafter made, or any right of interment shall be complete or effective until recorded on the books of the mausoleum-columbarium authority.

History: **En. Sec. 34, Ch. 35, L. 1949; R.C.M. 1947, 9-609.**

35-21-502. Records of interments and cremations required. The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under its charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director.

History: **En. Sec. 33, Ch. 35, L. 1949; R.C.M. 1947, 9-608.**

35-21-503. Records open to inspection. The records shall be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: En. Sec. 35, Ch. 35, L. 1949; R.C.M. 1947, 9-610.

35-21-504. Record of casket before cremation — inspection. No crematory operated by a mausoleum-columbariun authority shall, after July 1, 1949, cremate the remains of any human body without making a permanent signed record of the color, shape, and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto.

History: En. Sec. 51, Ch. 35, L. 1949; R.C.M. 1947, 9-611.

35-21-505. Violation a misdemeanor. Each person violating any provision of 35-21-504 shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 52, Ch. 35, L. 1949; R.C.M. 1947, 9-612.

Part 6

Endowment Care and Trust Funds

35-21-601. Authority to establish endowment care fund — commingling for investment. (1) Every mausoleum-columbarium authority which on or after July 1, 1949, maintains a mausoleum or columbarium may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund.

(2) Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

History: En. Sec. 89, Ch. 35, L. 1949; R.C.M. 1947, 9-901.

35-21-602. Principal of funds irreducible. The principal of all funds for endowment care shall forever remain irreducible and inviolable and shall be maintained separate and distinct from all other funds.

History: En. Sec. 90, Ch. 35, L. 1949; R.C.M. 1947, 9-902.

35-21-603. Investment of funds — use of income. The principal of all funds for endowment care shall be invested, from time to time reinvested, and kept invested, and the income earned shall be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium or both and the grounds in which they are situated and shall be applied in such manner as the mausoleum-columbarium authority may from time to time determine to be for the best interest of the mausoleum-columbarium.

History: En. Sec. 91, Ch. 35, L. 1949; R.C.M. 1947, 9-903.

35-21-604. Permissible investment securities. The endowment care funds shall be invested, reinvested, and kept invested in securities which are legal investments for public employees' retirement funds under the laws of the state of Montana.

History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

35-21-605. Plans for general care — collections from purchasers of plots for fund. The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium and charge and collect from all subsequent purchasers of plots such reasonable sums as, in the judgment of the mausoleum-columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance, and embellishment.

History: En. Sec. 92, Ch. 35, L. 1949; R.C.M. 1947, 9-904.

35-21-606. Agreement for care in accordance with plan. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or in a separate instrument an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

History: En. Sec. 93, Ch. 35, L. 1949; R.C.M. 1947, 9-905.

35-21-607. Agreement for endowment care of plot. Upon the application of the owner of any plot and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with him for the care of his plot and its appurtenances.

History: En. Sec. 94, Ch. 35, L. 1949; R.C.M. 1947, 9-906.

35-21-608. Board of trustees of fund. The mausoleum-columbarium authority may appoint a board of trustees of not less than five in number for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

History: En. Sec. 95, Ch. 35, L. 1949; R.C.M. 1947, 9-907.

35-21-609. Directors of mausoleum-columbarium authority as trustees — investments. The directors of a mausoleum-columbarium authority, if any, may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees, the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

History: En. Sec. 96, Ch. 35, L. 1949; R.C.M. 1947, 9-908.

35-21-610. Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and such bank or trust company shall be authorized to receive and accept said fund and all accretions thereto, including any accumulated endowment care fund in existence at the time of its appointment.

History: **En. Sec. 97, Ch. 35, L. 1949; R.C.M. 1947, 9-909.**

35-21-611. Compensation of trustees. No sum in excess of 5% of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee, provided that if 5% of such income divided by the number of trustees shall be less than $100, each trustee shall nevertheless be entitled to receive a minimum of $100 per year for his services as such trustee.

History: **En. Sec. 98, Ch. 35, L. 1949; R.C.M. 1947, 9-910.**

35-21-612. Annual financial report to be filed with district court. The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually and within 90 days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located a true and correct written report verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care funds.

History: **En. Sec. 99, Ch. 35, L. 1949; R.C.M. 1947, 9-911.**

35-21-613. Gifts for endowment care fund. A mausoleum-columbarium authority which has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund.

History: **En. Sec. 100, Ch. 35, L. 1949; R.C.M. 1947, 9-912.**

35-21-614. Endowment fund and contributions for charitable purposes — validity of contributions. (1) The endowment care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for general endowment care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: **En. Sec. 101, Ch. 35, L. 1949; R.C.M. 1947, 9-913.**

35-21-615. Endowment care mausoleum-columbarium — amount of deposit required. (1) An endowment care mausoleum-columbarium is one which shall after July 1, 1949, deposit in its endowment care fund not less than the following amounts for plots sold or disposed of:

(a) $5 for each niche;
(b) $15 for each crypt.

(2) The deposit shall be made not later than the 20th day of the month following the final payment on the purchase price of the plot.

History: **En. Sec. 102, Ch. 35, L. 1949; R.C.M. 1947, 9-914.**

35-21-616. Nonendowment care mausloeum-columbarium. A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund the minimum specified in 35-21-615.

History: **En. Sec. 103, Ch. 35, L. 1949; R.C.M. 1947, 9-915.**

35-21-617. Endowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is an endowment care property".

History: **En. Sec. 104, Ch. 35, L. 1949; R.C.M. 1947, 9-916.**

35-21-618. Annual report of endowment care mausoleum or columbarium to be filed in principal office. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report which shall be available to any plot owner and which shall contain, as of the close of its last fiscal year:

(1) amount of principal of the endowment care fund;

(2) total amount invested in bonds, securities, or other investments authorized by law and the total amount of cash on hand not invested, which shall actually show the financial condition of the trust.

History: **En. Sec. 105, Ch. 35, L. 1949; R.C.M. 1947, 9-917.**

35-21-619. Annual revision of report — verification. All the information appearing on the report filed in the mausoleum-columbarium authority office shall be revised annually and verified by the president and secretary or two officers authorized by the mausoleum-columbarium authority.

History: **En. Sec. 106, Ch. 35, L. 1949; R.C.M. 1947, 9-918.**

35-21-620. Nonendowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property". This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership, or deeds.

History: **En. Sec. 107, Ch. 35, L. 1949; R.C.M. 1947, 9-919.**

35-21-621. Violation a misdemeanor. Any corporation or its agents or representatives who shall violate any of the provisions of 35-21-615 to

35-21-620, inclusive, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature, or other publication shall be guilty of a misdemeanor.

History: En. Sec. 108, Ch. 35, L. 1949; R.C.M. 1947, 9-920.

35-21-622. Acceptance of gifts in trust. A mausoleum-columbarium authority which has established endowment care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal or proceeds or income to either or all of the following purposes:

(1) improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it;

(2) planting or cultivation of trees, shrubs, or plants in or around any part of the grounds in which the mausoleum-columbarium is situated;

(3) special care or ornamenting of any part of any plot, section, corridor, or other portion of the mausoleum-columbarium;

(4) any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

History: En. Sec. 110, Ch. 35, L. 1949; R.C.M. 1947, 9-922.

35-21-623. Contributions for charitable purposes — validity of contributions. (1) The sums paid in or contributed to the fund authorized by this chapter are hereby expressly permitted as and for a charitable and eleemosynary purpose. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred or to be interred in the mausoleum-columbarium and likewise a provision for the benefit and protection of the public by preserving, beautifying, and keeping mausoleums and columbariums from becoming unkept and place of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for such purpose is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: En. Sec. 111, Ch. 35, L. 1949; R.C.M. 1947, 9-923.

35-21-624. Director, officer, or trustee not to borrow funds. No director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care funds shall borrow any endowment care or special care funds of the corporation for himself, directly or indirectly.

History: En. Sec. 112, Ch. 35, L. 1949; R.C.M. 1947, 9-924.

35-21-625. Illegal loan — misdemeanor. Every director or officer authorizing or consenting to a loan and the person who receives a loan in violation of this chapter are severally guilty of a misdemeanor.

History: En. Sec. 115, Ch. 35, L. 1949; R.C.M. 1947, 9-927.

35-21-626. Merchandise trust fund. Whenever moneys are received by any corporation or association for merchandise sold by such corporation or association for future delivery, a merchandise trust fund shall be established and the wholesale cost of said merchandise deposited therein. The trustees shall administer this trust fund in accordance with this chapter.

Upon delivery of said merchandise to the purchaser, the moneys on deposit therefor shall be paid to the corporation or association.

History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

Part 7

Desecration and Vandalism
Regulation of Construction

35-21-701. Removal of remains with intent to sell or dissect — penalty. Every person who removes any part of any human remains from any place where it has been interred in a mausoleum or columbarium or from any place where it is deposited while awaiting interment in a mausoleum or columbarium with intent to sell it or to dissect it without authority of law or from malice or wantonness shall be punished by imprisonment in the state penitentiary for not more than 5 years or by a fine of not more than $1,000 or by both.

History: En. Sec. 20, Ch. 35, L. 1949; R.C.M. 1947, 9-1001.

35-21-702. Mutilation or removal of remains without authority — penalty. Every person who mutilates, disinters, or removes from the place of interment in a mausoleum or columbarium any human remains without authority of law shall be punished by imprisonment in the state penitentiary for not more than 3 years or by a fine of not more than $1,000 or by both.

History: En. Sec. 21, Ch. 35, L. 1949; R.C.M. 1947, 9-1002.

35-21-703. Attachment or detention of remains — misdemeanor. A person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor.

History: En. Sec. 22, Ch. 35, L. 1949; amd. Sec. 4, Ch. 62, L. 1977; R.C.M. 1947, 9-1003.

35-21-704. Destruction or injury of property — interference with funeral or interment — misdemeanor. (1) A person is guilty of criminal mischief and is punishable as provided in 45-6-101 who without right knowingly does any of the following:

(a) destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes a crypt, niche, monument, memorial, or marker in a mausoleum or columbarium or a gate, door, fence, wall, post, or railing or an inclosure for the protection of a crypt or niche or any other property in a mausoleum or columbarium;

(b) destroys, cuts, breaks, removes, or injures a building, statuary, ornamentation, tree, shrub, flower, or plant within a mausoleum or columbarium or within the limits of any grounds within which a mausoleum or columbarium is located.

(2) A person is guilty of a misdemeanor who without right knowingly disturbs, obstructs, detains, or interferes with a person carrying or accompanying human remains to a mausoleum, columbarium, or funeral establishment or a person who is engaged in a funeral service or an interment.

History: En. Sec. 30, Ch. 35, L. 1949; amd. Sec. 5, Ch. 62, L. 1977; R.C.M. 1947, 9-1004.

35-21-705. Civil liability — application of recovery. Any person violating any provision of 35-21-704 is liable in a civil action by and in the name of the mausoleum-columbarium authority to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed.

History: En. Sec. 31, Ch. 35, L. 1949; R.C.M. 1947, 9-1005.

35-21-706. Exemptions from criminal mischief provisions. (1) The provisions of 35-21-704 do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority, of anything placed in or upon any portion of its mausoleum or columbarium or the grounds within which the same are situated in violation of any of the rules of the mausoleum-columbarium authority.

(2) The provisions of 35-21-704 do not apply to the removal of anything placed in a mausoleum or columbarium or the grounds within which it is situated, by or with the consent of the mausoleum-columbarium authority, which has become wrecked, unsightly, or dilapidated.

History: En. Sec. 32, Ch. 35, L. 1949; amd. Sec. 6, Ch. 62, L. 1977; R.C.M. 1947, 9-1006.

35-21-707. Converted or altered building subject to chapter. A building not erected for or which is not used as a place of interment of human remains which is converted or altered for such use by a mausoleum-columbarium authority is subject to this chapter.

History: En. Sec. 116, Ch. 35, L. 1949; R.C.M. 1947, 9-1007.

35-21-708. Construction requirements — durability. No building or structure intended to be used for the interment of human remains shall be constructed and a building not used for the interment of human remains shall not be altered for use or used for interment purposes unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science.

History: En. Sec. 117, Ch. 35, L. 1949; R.C.M. 1947, 9-1008.

35-21-709. Fireproof construction of crematories — exceptions. (1) No crematory shall be constructed or established by a mausoleum-columbarium authority unless the crematory is of fireproof construction and there is in connection therewith either a fireproof columbarium or a fireproof mausoleum, amply equipped at all times for the interment of remains of bodies cremated at the crematory and a fireproof room for temporary care of cremated remains.

(2) Nothing herein contained shall prevent crematories existing on July 1, 1949, from being repaired, altered, or reconstructed. Nothing in this chapter shall prohibit the cremation of human remains in crematories existing on July 1, 1949, or the temporary storage of cremated remains.

History: En. Sec. 50, Ch. 35, L. 1949; R.C.M. 1947, 9-1009.

35-21-710. Fireproof construction of mausoleums and columbariums. All mausoleums or columbariums constructed after July 1, 1949, shall be of Class "A" fireproof construction.

History: En. Sec. 118, Ch. 35, L. 1949; R.C.M. 1947, 9-1010.

35-21-711. Construction to comply with city ordinances. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing Class "A" construction, the provisions of the local ordinances and specifications shall not be violated.

History: **En. Sec. 119, Ch. 35, L. 1949; R.C.M. 1947, 9-1011.**

35-21-712. Construction in violation of chapter a public nuisance — penalty. An owner or operator of a mausoleum or columbarium erected in violation of this chapter is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than $500 or more than $5,000 in the case of a corporation or as provided in 45-8-111 in the case of an individual. In addition, the owner or operator is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. The costs, expenses, and disbursements shall be fixed by the court having jurisdiction of the case.

History: **En. Sec. 121, Ch. 35, L. 1949; amd. Sec. 7, Ch. 62, L. 1977; R.C.M. 1947, 9-1013.**

35-21-713. Violations of chapter a misdemeanor. Every person who violates any provision of this chapter is guilty of a misdemeanor and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case.

History: **En. Sec. 120, Ch. 35, L. 1949; R.C.M. 1947, 9-1012.**

TITLE 36

RESERVED

TITLE 37

PROFESSIONS AND OCCUPATIONS

Ch.
1. General Provisions.
2. General Provisions Relating to Health Care Practitioners.
3. Medicine.
4. Dentistry and Dental Hygiene.
5. Osteopathy.
6. Podiatry.
7. Pharmacy.
8. Nursing.
9. Nursing Home Administrators.
10. Optometry.
11. Physical Therapy.
12. Chiropractic.
13. Acupuncture Practice Act.
14. Radiologic Technologists.
15. Speech Pathologists and Audiologists.
16. Hearing Aid Dispensers.
17. Psychologists.
18. Veterinary Medicine and Technology.
19. Morticians and Funeral Directors.
Chapters 20 through 29 reserved.
30. Barbers.
31. Cosmetology.
32. Electrology.
33. Massage Therapy.
Chapters 34 through 39 reserved.
40. Sanitarians.
41. Cesspool, Septic Tank, and Privy Cleaners.
42. Water Treatment Plant Operators.
43. Water Well Contractors.
Chapters 44 through 49 reserved.
50. Public Accountants.
51. Real Estate License Act.
52. Title Abstracters.
Chapters 53 through 59 reserved.
60. Private Investigators and Patrolmen.
61. Attorneys at Law.
Chapters 62 through 64 reserved.
65. Architecture.
66. Landscape Architecture.
67. Engineers and Land Surveyors.
68. Electricians and Electrical Safety.
69. Plumbers.
70. Heating, Ventilation, Air Conditioning.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Duties of Department, Director, and Boards

Section
37-1-101. Duties of department.
37-1-102. Duties of director.

37-1-103. Duties of boards.

Part 2 — Licensure of Criminal Offenders

37-1-201. Purpose.
37-1-202. Intent and policy.
37-1-203. Conviction not a sole basis for denial.
37-1-204. Statement of reasons for denial.
37-1-205. Licensure on completion of supervision.

Part 1

Duties of Department, Director, and Boards

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of professional and occupational licensing shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on a pro rata basis according to the number of man-days and the actual operating costs of the department for each board.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603.

37-1-102. Duties of director. In addition to his powers and duties under 2-15-112 and 2-15-121, the director of professional and occupational licensing shall:

(1) appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604.

37-1-103. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under 37-1-102(1).

(3) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6).

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3).

Part 2

Licensure of Criminal Offenders

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

CHAPTER 2

GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 — Dispensing of Drugs

Section
37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
Sections 37-2-107 through 37-2-110 reserved.
37-2-111. Duty to report prescriptions issued to drug addicts.

Part 2 — Nonliability for Peer Review

37-2-201. Nonliability for peer review — evidential privilege — application to nonprofit corporations.

Part 3 — Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.
37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.

Part 1

Dispensing of Drugs

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, or chiropody (podiatry) and in such practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia, the official National Formulary, or in any supplement to such pharmacopoeia or formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but such term does not include any device or any components of a device.

(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(4) "Pharmacy" means an office, pharmacy, drugstore, or other establishment which engages in the sale of drugs at retail.

(5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which such medical practitioner maintains an office for professional practice.

(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but such term does not include a pharmacy.

(7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(8) "State" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901.

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under 37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples.

History: En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

37-2-107 through 37-2-110 reserved.

37-2-111. Duty to report prescriptions issued to drug addicts. (1) A physician duly licensed to practice medicine in Montana who prescribes for or dispenses, administers, or in any manner gives opium or coca leaves or any of their derivatives, salts, preparations, or compounds to a person known to him or believed by him to be an habitual user or a drug addict shall, within 48 hours, report the name, address, physical and mental condition, and any necessary substantial information regarding such person to the county attorney of the county in which that physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this section.

(2) An "habitual user of drugs" or "drug addict" is defined as follows: a person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular intervals for 30 consecutive days prior to the day that person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives.

(3) If a physician prescribes for or dispenses, administers, or in any manner gives any of the drugs mentioned in this section daily for more than 30 days to a person, that physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing to prescribe for, dispense, administer, or give such drugs to such person, and the prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such person.

(4) The county attorney shall, upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

(5) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sentenced to a term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed $500, or both.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Part 2

Nonliability for Peer Review

37-2-201. Nonliability for peer review — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee.

History: **En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979.**

Part 3

Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease or a disease declared reportable by the department of health and environmental sciences, he shall immediately report the case to the local health officer. The report shall be in the form and contain information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines shall be paid to the county treasurer of the county in which the violation occurs.

History: **(1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part).**

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: **En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.**

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: **En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.**

CHAPTER 3

MEDICINE

Part 1 — General

Section
37-3-101. Purpose.
37-3-102. Definitions.
37-3-103. Exemptions from licensing requirements.

Part 2 — Board of Medical Examiners

37-3-201. Organization.
37-3-202. Policy.
37-3-203. Powers and duties.
37-3-204. Meetings.
37-3-205. Records.
37-3-206. Compensation and expenses of members.

Part 3 — Licensing

37-3-301. License required — kinds of certificates.
37-3-302. Certificate to specify practice permitted.
37-3-303. Practice authorized by physician's certificate.
37-3-304. Practice authorized by temporary certificate.
37-3-305. Qualifications for licensure.
37-3-306. Physician's certificate — examination — reciprocity and endorsement.
37-3-307. Qualifications for licensure — temporary certificate.
37-3-308. Examination and application fees — further tax forbidden.
37-3-309. Application for license.
37-3-310. Notice of change of address or name — applicants — licensees.
37-3-311. Examination.
37-3-312. Issuance of license.
37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees.
37-3-314. Deposit of money received.
Sections 37-3-315 through 37-3-320 reserved.
37-3-321. Refusal of license.
37-3-322. Unprofessional conduct.
37-3-323. Revocation or suspension of license — probation.
37-3-324. Reconsideration and review of actions of board.
37-3-325. Violations — penalties.
37-3-326. Injunctive relief — manner of charging violation.
37-3-327. Subpoena — fees.
37-3-328. Failure to appear or testify.

Part 4 — Reporting Obligations

37-3-401. Report of incompetence or unprofessional conduct.
37-3-402. Insurer to report to board.
37-3-403. Report of prohibition or limitation on practice by hospital.
37-3-404. Immunity of person providing information.
37-3-405. Suspension of license or privilege for failure to report.

Part 1

General

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.

37-3-102. Definitions. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter.

(b) "Board" means the Montana state board of medical examiners provided for in 2-15-1605.

(c) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) An "approved medical school" is a school which either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) An "approved internship" is an internship training program of at least 1 year in a hospital which is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board shall have the authority, upon investigation, to approve any other internship.

(4) An "approved residency" is a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board shall have the authority upon investigation to approve any other residency.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part).

37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist; and

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or

mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part).

Part 2

Board of Medical Examiners

37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the further words "Official Seal", and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

History: En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015.

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.

37-3-203. Powers and duties. (1) The board may:

(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter.

(2) A person hired by the department to assist it and the board in investigations, the authorization of temporary certificates, professional correspondence, and related matters shall be approved by the board.

History: En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017.

37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four members of the board constitute a quorum.

History: En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018.

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for certificates and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019.

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive $25 per day compensation while traveling to and from board meetings and while attending board meetings and for each full day away from home while conducting board business, plus travel expenses as provided for in 2-18-501 through 2-18-503, while in the active and necessary discharge of his duties.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020.

Part 3

Licensing

37-3-301. License required — kinds of certificates. (1) Prior to the issuance of a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue two forms of certificates under the board's seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

(a) physician's certificate, which is subject to annual registration;

(b) temporary certificate, which is subject to specifications and limitations imposed by the board.

History: (1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part).

37-3-302. Certificate to specify practice permitted. The certificates issued shall state the extent and character of the practice that is permitted and shall be in the form prescribed by the board. Neither the privileges granted to nor the obligations imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder.

History: En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.

37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979.

37-3-304. Practice authorized by temporary certificate. The temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board, authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience, subject, nevertheless, to all specifications, conditions, and limitations imposed by the board.

History: En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024.

37-3-305. Qualifications for licensure. (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before the board unless such appearance has been specifically waived by the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) No person may be granted a temporary license to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979.

37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979.

37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license

subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

History: (1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3).

37-3-308. Examination and application fees — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

(2) All applicants except applicants for temporary licenses shall pay an initial application fee of $100.

(3) An applicant for a temporary license shall pay an initial fee of $25 and $25 for each renewal thereof.

(4) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031.

37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least 30 days prior to the announced date of the examination. If the applicant is not at the time of filing his application a graduate of but is then in attendance at an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then-current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least 1 year of an approved internship or its equivalent and has

otherwise met the requirements for the issuance of a license under this chapter.

History: **En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032.**

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name. If the person changes his address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department.

History: **En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048.**

37-3-311. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers may not disclose the name of an applicant but shall be identified by a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(3) The board may use other Montana physicians to assist in preparing the examination.

(4) A person may not be granted a license to practice medicine if he fails to attain an average grade of at least 75%. If an applicant fails to meet the minimum grade requirements in his first examination, he may, after not less than 6 months or more than 12 months, be reexamined. He may take one additional examination but not less than 1 year after the date of the last preceding examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination, he may, within 2 years, be examined without submitting a new application.

History: **En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033.**

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board.

History: **En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part).**

37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department an annual registration fee, not to exceed the sum of $100, as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board in an amount not to exceed $50 or, at the discretion of the board, he may be reinstated on the payment of a fee not to exceed $50 for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty of $10. The department may collect the dues by an action at law.

(4) No registration or license fee may be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: **En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042.**

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the earmarked revenue fund may be used, on approval by the department of administration and the governor.

History: **En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043.**

37-3-315 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after hearing the board determines he is not entitled to a license, the board shall refuse to grant the license.

History: **En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036.**

37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) willful disobedience of the rules of the board;

(5) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(6) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(7) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(9) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;

(10) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(11) testifying in court on a contingency basis;

(12) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(13) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(14) gross malpractice or negligent practice;

(15) practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(16) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them; or

(17) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979.

37-3-323. Revocation or suspension of license — probation. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038.

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under Title 35, chapter 4) practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as his own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041.

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045.

37-3-327. Subpoena — fees. Whenever the board in the transaction of any of its business or in the conduct of any hearing or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board or such person may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.

37-3-328. Failure to appear or testify. Any person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify shall be dealt with by the district court from which such subpoena was issued in the same manner and to the same effect as though the subpoena had commanded him to appear and testify in a cause on trial in said court.

History: En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047.

Part 4

Reporting Obligations

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society thereof shall and any other person may report to the state board of medical examiners any information such physician, organization, association, society, or person has which appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) This section applies to professional standards review organizations only to the extent that such organizations are not prohibited from disclosing such information under federal law.

History: En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053.

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. The report required by this section shall include the name of the insured, the name of the person making the claim, and the reason or reasons for which the claim is made.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054.

37-3-403. Report of prohibition or limitation on practice by hospital. Each hospital or health care facility which prohibits or limits the privilege of a physician to practice medicine within that facility shall report such action to the state board of medical examiners within 30 days after the action is taken if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 37-3-322 or 37-3-323(1). The report shall include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055.

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of

Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: **En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.**

CHAPTER 4

DENTISTRY AND DENTAL HYGIENE

Part 1 — General

Section

37-4-101. Definitions — practice of dentistry.
37-4-102. Designations constituting prima facie evidence of practicing dentistry.
37-4-103. Exemptions.

Part 2 — Board of Dentists

37-4-201. Official seal — organization — subpoena power.
37-4-202. Meetings — notice — quorum — records.
37-4-203. Compensation and expenses of board members — disbursement of excess funds.
37-4-204. Affiliation with national association authorized — delegate — expenses allowed.

Part 3 — Licensing

37-4-301. Examination — qualifications — fees — certification.
37-4-302. Recognition of dental schools.
37-4-303. Certificate to be registered in county where practicing — replacing lost certificate.
37-4-304. County clerk's register of dentists — fee for registration.
37-4-305. Failure to register certificate prima facie proof of lack of authority to practice.
37-4-306. Admission of dentists from other states — reciprocity.
37-4-307. Annual renewal fee — absent registered dentist — default.
Sections 37-4-308 through 37-4-320 reserved.
37-4-321. Grounds for disciplinary proceedings — range of sanctions.
37-4-322. When publishing professional cards not unprofessional conduct.
37-4-323. Procedure for investigation — sanctions.
37-4-324. Board may procure court order to compel attendance of witnesses — contempt.
37-4-325. Witness fees and mileage.
37-4-326. Acts constituting misdemeanors.
37-4-327. Practicing dentistry without certificate — penalty.
37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction.

Part 4 — Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene.
37-4-402. License — examination.
37-4-403. Issuance of certificate — fee.
37-4-404. Admission of dental hygienists from other states — reciprocity.
37-4-405. Dental hygienist to practice under supervision of licensed dentist.
37-4-406. Annual renewal fee — revocation of license.
37-4-407. Provision not to apply to licensed dentist, physician, or surgeon.
37-4-408. Auxiliary personnel — employment, duties, and limitations.

Part 5 — Regulatory Provisions

37-4-501. Work order for construction or repair of appliances.
37-4-502. Restrictions on advertising and solicitation.
37-4-503. Identification of dentures.

Part 1

General

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of dentists provided for in 2-15-1606.

(b) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) A person is "practicing dentistry" under this chapter if he:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to himself, any other person, or agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1).

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Whenever any person shall append the word "dentist" or the letters "D.D.S.", "D.M.D.", or like letters to his or her name in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done, the same shall be prima facie evidence that such person is engaged in the practice of dentistry and subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) Nothing in this chapter prevents a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to his teaching functions. Nothing in this chapter prevents students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board, provided such dental procedures are a part of the assigned teaching curriculum.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979.

Part 2

Board of Dentists

37-4-201. Official seal — organization — subpoena power. Said board shall have an official seal of its own design and shall employ the same to authenticate its acts and records as may be required. The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board. Any member of the board shall have the power to administer oaths and affirmations and said board shall have the power to hear testimony and subpoena witnesses as to all matters relating to the duties imposed upon it by law.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903.

37-4-202. Meetings — notice — quorum — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Four members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of moneys received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979.

37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall be reimbursed as follows:

(a) $25 per day for each day in actual attendance at a meeting of the board;

(b) expenses and travel authorized under 2-18-501 through 2-18-503.

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board. The department, on the written request of the board, shall set aside in a separate account in the earmarked revenue fund the emergency moneys provided under 37-4-307. This account may be expended only when the board determines that an emergency exists requiring an expenditure therefrom.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3).

37-4-204. Affiliation with national association authorized — delegate — expenses allowed. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send a delegate to the meetings of the association. The delegate shall be reimbursed as follows:

(1) $15 per day for each day traveling to and from a meeting and while in actual attendance at a meeting;

(2) expenses and travel authorized under 2-18-501 and 2-18-503; and

(3) first-class railroad and Pullman fares actually incurred to and from his place of residence to the place of a meeting.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920.

Part 3

Licensing

37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

(9) The board may in its discretion permit a dental student who has successfully completed his junior year in a recognized dental school and who files proof satisfactory to the board that he has the preliminary education

described in this section to take a written examination in the subjects he has completed. Satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee commensurate with costs and set by the board for this examination, which shall apply on the final examination taken by the applicant.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

37-4-302. Recognition of dental schools. In determining what shall constitute a recognized dental college or school and/or a recognized school of dental hygiene, the board shall be guided by the standards, canons, and practices required for such recognition by the council on dental education of the American dental association.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924.

37-4-303. Certificate to be registered in county where practicing — replacing lost certificate. (1) The certificate under this chapter entitles the holder to practice dentistry in any county in this state if the certificate is first filed for registration and registered in the office of the county clerk and recorder of the county in which the holder desires to practice. This chapter does not permit a holder of a certificate to practice in a county in this state unless the certificate has been first registered in the office of the clerk and recorder of the county. A holder of a certificate may practice in more than one or in any number of counties in this state on having the certificate registered in each of the counties in which the holder desires to practice.

(2) The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee of $10 shall be charged for issuing the certificate.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1).

37-4-304. County clerk's register of dentists — fee for registration. The county clerk and recorder of each county in the state of Montana is required to register in a special book to be kept by him for that purpose, to be known as the register of dentists, all certificates issued under the provisions of this chapter which may be presented to him for that purpose. Such registration shall show the name and place of residence of the certificate holder, the date of the issuance of such certificate, and the date of the registration thereof. After the registration of any such certificate, such county clerk and recorder shall return the same with the certificate of its registration to the party entitled thereto. Such county clerk and recorder shall receive for such filing and registration a fee of $1, which shall be paid by the holder thereof.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Failure to register certificate prima facie proof of lack of authority to practice. In a prosecution for a misdemeanor under this chapter, the certificate of the county recorder of the county in which the misdemeanor is alleged to have been committed, to the effect that there has been no certificate of the department issued under this chapter to the person accused of the misdemeanor, filed and registered in the county recorder's office is prima facie proof that the person is not entitled to practice dentistry in the county.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Admission of dentists from other states — reciprocity. (1) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, is a graduate of an accredited 4-year high school or has actual scholastic credits equivalent to a 4-year high school course, is a graduate of a recognized dental school or college, has been lawfully and continuously engaged in the practice of dentistry for 5 years or more immediately before filing his application to practice in this state, and deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee of $50 and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state without being required to take an examination in theory.

(2) However, no license may be issued to an applicant without an examination in theory unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage in the practice of dentistry to dentists licensed by this state who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2).

37-4-307. Annual renewal fee — absent registered dentist — default. (1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a renewal fee for the year, a sum set by the board and not to exceed $50. The board may increase or decrease the annual renewal fee to maintain in the earmarked revenue fund at all times an amount, to be known as the emergency fund, to be used for the purpose of administering, policing, and enforcing this chapter. The emergency fund shall be maintained at an approximate level of $2,500. Notice of the change in the amount of renewal fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by a payment set by the board each year, not to exceed $25, or at the discretion of the board, he may be reinstated on the payment of a fee of $25 for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual renewal fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the renewal fee plus a late payment penalty of $10 before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect renewal fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979.

37-4-308 through 37-4-320 reserved.

37-4-321. Grounds for disciplinary proceedings — range of sanctions. The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter for any of the following causes:

(1) conviction of a felony or misdemeanor when the sentence imposed is imprisonment in the state prison. A certified copy of the conviction record from the district court imposing the sentence is conclusive evidence;

(2) physical or mental incompetence;

(3) gross malpractice or repeated malpractice;

(4) unprofessional conduct, as defined by rule of the board; or

(5) violation of any of the provisions of this chapter or rules or orders of the board.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979.

Compiler's Comments

Severability. Sec. 6, Ch. 493, L. 1979, was a severability clause.

Statement of Intent. The statement of intent adopted with HB 585 (Ch. 493, L. 1979) provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Board of Dentists for the purpose of defining unprofessional conduct.

Section 1 of the bill deletes a fairly specific list of types of unprofessional conduct by a dentist and allows the Board of Dentists to adopt a rule defining unprofessional conduct. It is the Legislature's intent that the Board's rule would reinstate some of the statutory examples, but would not adopt the present law's ban on advertising. The Board may prohibit only so much advertising as the courts would let a state prohibit. This is intended to comply with court orders issued at the behest of the FTC in Louisiana and other states.

Sections 1 and 3 also set up a range of sanctions that the Board may impose on any dentist or dental hygienist whose conduct constitutes grounds for sanctions. This is intended to expand the Board's powers on the less stringent end of the scale, by adding censure and probation to the revocation and suspension powers the Board now has. Often a problem can be corrected with such milder sanctions when efforts to suspend or revoke might be counterproductive."

37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979.

37-4-323. Procedure for investigation — sanctions. (1) Upon receipt of a complaint or upon its own motion the board shall determine whether the matters alleged warrant investigation and may cause investigation to be made. If the board finds preliminary cause for imposing the sanctions listed in 37-4-321, it may do so in accordance with the provisions of the Montana Administrative Procedure Act. If the board finds that the evidence obtained does not justify the imposition of sanctions, it must so notify the licensee concerned and the complaining party and take no further action.

(2) If the board finds that the evidence obtained does not warrant suspension or revocation of a license but does warrant other sanctions, it may either:

(a) issue a public or private decree of censure; or

(b) impose a probation with terms and conditions appropriately adapted under the circumstances of the particular case.

(3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of censure or probation becomes effective to the same extent an opportunity for hearing is afforded prior to suspension or revocation.

(4) In addition to its authority to impose sanctions, the board may deny an application for a license for any of the following reasons:

(a) failure to meet the relevant requirements of Title 37, chapter 4;

(b) making any untrue or fraudulent statement in support of the application; or

(c) any of the grounds set forth in 37-4-321 for suspension or revocation of a license.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

Compiler's Comments

Severability. Sec. 6, Ch. 493, L. 1979, was a severability clause.

Statement of Intent. The statement of intent adopted with HB 585 (Ch. 493, L. 1979) provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Board of Dentists for the purpose of defining unprofessional conduct.

Section 1 of the bill deletes a fairly specific list of types of unprofessional conduct by a dentist and allows the Board of Dentists to adopt a rule defining unprofessional conduct. It is the Legislature's intent that the Board's rule would reinstate some of the statutory examples, but would not adopt the present law's ban on advertising. The Board may prohibit only so much advertising as the courts would let a state prohibit. This is intended to comply with court orders issued at the behest of the FTC in Louisiana and other states.

Sections 1 and 3 also set up a range of sanctions that the Board may impose on any dentist or dental hygienist whose conduct constitutes grounds for sanctions. This is intended to expand the Board's powers on the less stringent end of the scale, by adding censure and probation to the revocation and suspension powers the Board now has. Often a problem can be corrected with such milder sanctions when efforts to suspend or revoke might be counterproductive."

37-4-324. Board may procure court order to compel attendance of witnesses — contempt. (1) The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board or any member thereof shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board or any member thereof.

(2) In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the board or any member thereof before whom the testimony is to be given or produced may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the witness has failed and refused to attend or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena or has refused to answer questions propounded to him in the course of such proceedings and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board or a member thereof and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

37-4-325. Witness fees and mileage. (1) Each witness who shall appear by order of the board or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear and 1 day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board or a member thereof or referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915.

37-4-326. Acts constituting misdemeanors. Any person, company, or association shall be guilty of a misdemeanor and upon conviction thereof shall be punishable with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or by both such fine and imprisonment who shall:

(1) sell or barter or offer to sell or barter any diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchase or procure by barter any such diploma, certificate, or transcript with intent that the same shall be used as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating such practice;

(3) with fraudulent intent, alter in a material regard any such diploma, certificate, or transcript;

(4) use or attempt to use any such diploma, certificate, or transcript which has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office the required annual registration certificate for the current year; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to said board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of said person, company, or association at any time within 60 days prior to said notice, together with a sworn statement showing under and by what license or authority said

person, company, or association and said employee are and have been practicing dentistry, but said affidavit shall not be used as evidence against said person, company, or association in any proceeding under this section.

History: **En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918.**

37-4-327. Practicing dentistry without certificate — penalty. (1) A person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate to practice dentistry from the department entitling him to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter shall be deposited before January 1 of each year in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919.**

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justice's courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: **En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.**

Part 4

Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene. The practice of dental hygiene is the doing by one person for a direct or indirect consideration, with respect to the teeth of another person, an act or service, educational, therapeutic, prophylactic, or preventive in nature, as the board in writing defines and authorizes. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs, medications, or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part).

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in subsections (1), (2), and (3) of 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dental hygiene. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(5) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant.

(6) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

37-4-403. Issuance of certificate — fee. An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee of $15, be granted a license as a dental hygienist and shall be registered in a record kept by the department and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5).

37-4-404. Admission of dental hygienists from other states — reciprocity. (1) On the payment of a fee of $20 and after satisfactory practical examination demonstrating his proficiency, a dental hygienist may be granted a license to practice dental hygiene in this state without being required to take an examination in theory if he:

(a) has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

(b) has been lawfully and continuously engaged in the practice of dental hygiene for a period of 1 year or more immediately before filing his application to practice in this state; and

(c) deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments.

(2) Except as provided in subsection (3) of this section, no license may be issued without an examination in theory to the applicant unless the state

or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state who have moved to the other state.

(3) A dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with this state but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state and who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment, may, on the payment of a fee of $20, be granted a temporary license authorizing the person to practice dental hygiene from the time of the granting of the license until the time of the next regular examination for dental hygiene set by the board. No additional fee for the examination may be charged.

(4) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene are, in the opinion of the board, equal to those of this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4).

37-4-405. Dental hygienist to practice under supervision of licensed dentist. (1) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic authorized by the board.

(2) The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review by the board of a request for such service and a description of the type of supervision necessary is made by the board. For the purposes of this section "supervision" is defined as follows:

(a) "direct supervision" means the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment; and

(b) "general supervision" means those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979.

37-4-406. Annual renewal fee — revocation of license. (1) Before March 1 of each year, a licensed dental hygienist shall pay to the department a renewal fee set by the board, not to exceed $25. In default of payment, the board may, after hearing and on 30 days' notice, revoke the license of the hygienist in default; but the payment of the renewal fee on or before the time of hearing, with an additional sum set by the board, not to exceed $10, excuses the default. The department may collect the fee by suit.

(2) The board may likewise revoke or suspend the license of a dental hygienist for violating this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

37-4-408. Auxiliary personnel — employment, duties, and limitations. The board shall, within the limitations of this chapter, adopt rules which define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by any licensed dentist in his office, except that nothing herein shall be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by dental auxiliaries, as permitted by board rules, shall be under the direct supervision of the licensed dentist employing such personnel.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1.

Part 5

Regulatory Provisions

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist

shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3).

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

CHAPTER 5

OSTEOPATHY

Part 1 — General

Section

37-5-101. Definitions — practice of osteopathy.
37-5-102. Osteopathy not practice of medicine.

Part 2 — Board of Osteopathic Physicians

37-5-201. Organization — meetings — duties of department in relation to board.
37-5-202. Compensation of members — deposit of fees.

Part 3 — Licensing

37-5-301. Qualifications for licensure — application — reexamination.
37-5-302. Examination — examination fee.
37-5-303. Reciprocity.
37-5-304. Temporary certificates.
37-5-305. Limitations on certificate — prescribing drugs — surgery.
37-5-306. Record of license.
37-5-307. Renewal fee.
Sections 37-5-308 through 37-5-310 reserved.
37-5-311. Revocation of certificate.
37-5-312. Penalty for practicing osteopathy without a license.

Part 1

General

37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of osteopathic physicians provided for in 2-15-1607.

(b) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) Every person is "practicing osteopathy" within the meaning of this chapter who:

(a) appends to or uses in connection with his or her name the words "doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) professes publicly to or who, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section restrains or restricts any legally licensed physician or surgeon in the practice of his profession.

History: (1)En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974; Sec. 66-1401.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; re-en. Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R.C.M. 1921; re-en. Sec. 3136, R.C.M. 1935; Sec. 66-1412, R.C.M. 1947; R.C.M. 1947, 66-1401.1, 66-1412; amd. Sec. 4, Ch. 22, L. 1979.

37-5-102. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of chapter 3, parts 1 through 3, and is not subject to the provisions of those parts.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; re-en. Sec. 3137, R.C.M. 1935; amd. Sec. 7, Ch. 101, L. 1977; R.C.M. 1947, 66-1413; amd. Sec. 5, Ch. 22, L. 1979.

Part 2

Board of Osteopathic Physicians

37-5-201. Organization — meetings — duties of department in relation to board. (1) On the first Tuesday in March each year, the board shall elect from among its number a president, secretary, and treasurer. Its president and secretary may administer oaths. The board shall have a seal.

(2) The department shall, subject to 37-1-101, hold examinations at the state capitol on the first Tuesday in March and September of each year.

(3) The board shall hold meetings as necessary, each session not to exceed 3 days.

(4) The department shall issue a certificate of qualification to applicants having a diploma from a legally recognized and regularly conducted school of osteopathy at the time it was issued or who pass required examinations under 37-5-304. The certificate shall be signed by the president and secretary of the board and attested by its seal and is conclusive of the right of the lawful holder to practice osteopathy in this state.

(5) (a) The department shall keep:

(i) a record of the board's proceedings;

(ii) a register of applicants for a license, including his name, age, and time spent in the study and practice of osteopathy and the name and location of the college of osteopathic medicine from which the applicant holds a diploma; and

(iii) a register of the names of applicants licensed and rejected under this chapter.

(b) These books are prima facie evidence of matters recorded.

History: En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R.C.M. 1921; re-en. Sec. 3126, R.C.M. 1935; amd. Sec. 142, Ch. 350, L. 1974; R.C.M. 1947, 66-1402.

37-5-202. Compensation of members — deposit of fees. (1) Each of the members of the board may receive as compensation a sum not to exceed $20 for each day actually engaged in the duties of his office, together with travel expenses, as provided for in 2-18-501 through 2-18-503, connected with attending the meetings of the board.

(2) The fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R.C.M. 1921; re-en. Sec. 3134, R.C.M. 1935; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975; R.C.M. 1947, 66-1410.

Part 3

Licensing

37-5-301. Qualifications for licensure — application — reexamination. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements:

(a) 4 years of high school or its scholastic equivalent;

(b) at least 2 years' preprofessional college education in an accredited college or university; and

(c) 4 years' professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board.

(2) Application shall be made on forms prescribed by the board and furnished by the department.

(3) An applicant who fails the examination is entitled to a second examination without charge.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(1).

37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board, except as otherwise provided in 37-5-201.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license is $20.

History: En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R.C.M. 1921; re-en. Sec. 3129, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974; R.C.M. 1947, 66-1405.

37-5-303. Reciprocity. A graduate of a reputable school of osteopathy who has been strictly examined and licensed to practice osteopathy in another state may be licensed to practice osteopathy in this state on production to the board of his diploma and the license obtained in the other state and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may have the applicant examined as to his qualifications.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R.C.M. 1921; re-en. Sec. 3135, R.C.M. 1935; amd. Sec. 147, Ch. 350, L. 1974; R.C.M. 1947, 66-1411.

37-5-304. Temporary certificates. The secretary of the board may authorize the department, upon examination, to issue a certificate to an applicant to practice osteopathy until the next meeting of the board when he shall report the facts, at which time the temporary certificate expires, but the temporary certificate may not be issued after the board has once rejected the applicant.

History: En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R.C.M. 1921; re-en. Sec. 3128, R.C.M. 1935; amd. Sec. 144, Ch. 350, L. 1974; R.C.M. 1947, 66-1404.

37-5-305. Limitations on certificate — prescribing drugs — surgery. The certificates provided for in this chapter do not authorize the holders thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. A person holding a certificate under this chapter who prescribes or uses drugs in the practice of osteopathy or who performs major or operative surgery is guilty of a misdemeanor, provided that nothing in this chapter may be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the Montana board of medical examiners.

History: En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; re-en. Sec. 3130, R.C.M. 1935; amd. Sec. 6, Ch. 101, L. 1977; R.C.M. 1947, 66-1406.

37-5-306. Record of license. The person receiving such license shall have it recorded in the office of the county clerk in the county in which he or she resides, and the record shall be endorsed thereon. In case the person so licensed shall move to another county to practice, the holder shall record the license in a like manner in the county into which he or she moved, and the county clerk is entitled to charge and receive the usual fee for making such record.

History: En. Sec. 7, p. 50, L. 1901; rep. and re-en. Sec. 7, Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R.C.M. 1921; re-en. Sec. 3131, R.C.M. 1935; R.C.M. 1947, 66-1407.

37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall before April 1 of each year pay a renewal fee of $15 to the department, and a person holding a certificate to practice under this chapter who is not in active practice shall before April 1 of each year pay a renewal fee of $7.50 to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of $50 if the lapsed fees exceed that amount.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(2), (3).

37-5-308 through 37-5-310 reserved.

37-5-311. Revocation of certificate. Any such certificate may be revoked by said board upon satisfactory proof of fraud or misrepresentation in procuring the same or for any violation of the provisions of this chapter or any gross immorality by the holder of such certificate.

History: En. Sec. 9, p. 51, L. 1901; rep. and re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R.C.M. 1921; re-en. Sec. 3133, R.C.M. 1935; R.C.M. 1947, 66-1409.

37-5-312. Penalty for practicing osteopathy without a license. Any person practicing osteopathy in this state without first obtaining a license herein provided for or contrary to the provisions of this chapter or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or less than $250 or by imprisonment in the county jail not exceeding 1 year or less than 90 days or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this chapter.

History: En. Sec. 8, p. 51, L. 1901; rep. and re-en. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; re-en. Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R.C.M. 1921; re-en. Sec. 3132, R.C.M. 1935; R.C.M. 1947, 66-1408.

CHAPTER 6

PODIATRY

Part 1 — General

Section

37-6-101. Definitions.
37-6-102. Limitation on practice.
37-6-103. Application of chapter.
37-6-104. Construction of chapter.

Part 2 — Board of Podiatry Examiners

37-6-201. Compensation of board members — expenses.

Part 3 — Licensing

37-6-301. License required for practice.
37-6-302. Qualifications for licensure — exemptions from examination.
37-6-303. Examination — subjects — fees — reexamination.
37-6-304. Designations on license — recording — annual renewal fee — display.
37-6-305. Deposit of moneys collected.
Sections 37-6-306 through 37-6-310 reserved.
37-6-311. Refusal or revocation of license.
37-6-312. Penalty.

Part 1

General

37-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Chiropody" or "podiatry" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) "Podiatrist" means one practicing podiatry.

(3) "Board" means the board of podiatry examiners provided for in 2-15-1608.

(4) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

History: En. Sec. 1, Ch. 2, L. 1923; re-en. Sec. 3154.1, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974; R.C.M. 1947, 66-601.

37-6-102. Limitation on practice. A podiatrist may not amputate the human foot or toe or administer an anesthetic other than local.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part).

37-6-103. Application of chapter. This chapter shall not apply to any physician licensed to practice his profession in this state or to surgeons of the United States army, navy, and/or public health service when in actual performance of their duties.

History: En. Sec. 10, Ch. 2, L. 1923; re-en. Sec. 3154.10, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1939; R.C.M. 1947, 66-610.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers.

History: En. Sec. 8, Ch. 218, L. 1939; R.C.M. 1947, 66-611.

Part 2

Board of Podiatry Examiners

37-6-201. Compensation of board members — expenses. Each member of the board shall receive for his services $5 per diem and travel expenses as provided for in 2-18-501 through 2-18-503. Other contingent expenses necessarily incurred shall be paid by the state department in the same manner as other expenses of the state board of podiatry examiners.

History: En. Sec. 8, Ch. 2, L. 1923; re-en. Sec. 3154.8, R.C.M. 1935; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977; R.C.M. 1947, 66-608.

Part 3

Licensing

37-6-301. License required for practice. It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in a sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part).

37-6-302. Qualifications for licensure — exemptions from examination. (1) Examinations shall be held at places and times the board directs. Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the state board of podiatry examiners and furnished by the department, for a license to practice podiatry. The license may be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least 4 years or equivalent time in quarter or semester hours of instruction in an accredited college of podiatry recognized as being in good standing by the board and have successfully passed the examination.

(2) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of $50 to the department.

(3) A license may be granted, at the discretion of the board and upon payment of $50 to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board.

History: En. Sec. 3, Ch. 2, L. 1923; re-en. Sec. 3154.3, R.C.M. 1935; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977; R.C.M. 1947, 66-603.

37-6-303. Examination — subjects — fees — reexamination. (1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, histology, bacteriology, pharmacy, neurology, surgery (minor), podiatry, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license. The minimum requirements for a license are a general average of 75% in all the subjects involved and not less than 50% in any one subject.

(2) An examination and license fee of $35 shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his privilege under the original examination.

History: En. Sec. 4, Ch. 2, L. 1923; re-en. Sec. 3154.4, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974; R.C.M. 1947, 66-604.

37-6-304. Designations on license — recording — annual renewal fee — display. (1) A license issued under this chapter shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof or any other designation or title, except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot" so as not to mislead the public with respect to his right to treat other portions of the body.

(2) Licenses shall be recorded by the department the same as other medical licenses. The person receiving the license shall have it recorded in the

office of the county clerk in the county in which he resides, and the record shall be endorsed on it. If the person licensed moves to another county to practice, he shall record the license in the same manner in the county into which he moves, and the county clerk is entitled to charge and receive the usual fee for making this record.

(3) A license renewal fee set by the board in an amount not to exceed $25 shall be paid annually on July 1 of each year, and if not paid within 3 months, the license shall be revoked and may be reissued only on original application and payment of a fee of $35.

(4) Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice.

History: En. Sec. 5, Ch. 2, L. 1923; re-en. Sec. 3154.5, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977; R.C.M. 1947, 66-605.

37-6-305. Deposit of moneys collected. All fees shall be collected by the department and deposited in the earmarked revenue fund for the use of the state board of podiatry examiners, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 2, L. 1923; re-en. Sec. 3154.7, R.C.M. 1935; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977; R.C.M. 1947, 66-607.

37-6-306 through 37-6-310 reserved.

37-6-311. Refusal or revocation of license. (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license for any of the following causes:

(a) fraudulent representation in obtaining the license;

(b) incompetency in practice;

(c) use of untruthful or improbable statements to patients or in advertisements;

(d) habitual intoxication;

(e) unprofessional and immoral conduct; or

(f) selling or giving away alcohol or drugs for an illegal purpose.

(2) However, the board may authorize the department to grant or reissue such license after 6 months if in its judgment the act, acts, or conditions of disqualification have been remedied.

History: En. Sec. 6, Ch. 2, L. 1923; re-en. Sec. 3154.6, R.C.M. 1935; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974; R.C.M. 1947, 66-606; amd. Sec. 6, Ch. 22, L. 1979.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter, and upon conviction thereof, shall be fined the sum not exceeding $1,000 or be imprisoned in the county jail not to exceed 2 years, or both.

History: En. Sec. 9, Ch. 2, L. 1923; re-en. Sec. 3154.9, R.C.M. 1935; R.C.M. 1947, 66-609.

CHAPTER 7

PHARMACY

Part 1 — General

Section

37-7-101. Definitions.
37-7-102. Practice subject to regulation.

37-7-103. Exemptions.
37-7-104. Qualifications of employee hired to assist board.

Part 2 — Board of Pharmacists

37-7-201. Organization — powers and duties.
37-7-202. Salaries and expenses of board members.
37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors.

Part 3 — Licensing

37-7-301. Sale of drugs or medicines unlawful except as provided.
37-7-302. Examination — qualifications — fees — reciprocity.
37-7-303. Annual renewal fee.
37-7-304. Continuing education required.
37-7-305. Continuing education rules.
Sections 37-7-306 through 37-7-310 reserved.
37-7-311. Revocation of license issued to pharmacist or intern.
Sections 37-7-312 through 37-7-320 reserved.
37-7-321. Store license — certified pharmacy license — suspension or revocation.
37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising.
37-7-323. Penalty.
37-7-324. Deposit of fees and fines.

Part 4 — Prescriptions Regulated—Poisons

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions.
37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling.
37-7-403. Poison register.
37-7-404. Revocation of license for failure to keep or falsifying record.
37-7-405. Sale of poison without recording a misdemeanor.

Part 5 — Drug Product Selection

37-7-501. Short title.
37-7-502. Definitions.
37-7-503. Rulemaking.
37-7-504. General prohibition of drug substitution.
37-7-505. Product selection permitted — limitation.
37-7-506. Notice to purchaser.
37-7-507. Savings passed on.
37-7-508. Product selection not practice of medicine.
37-7-509. Limitations on liability.
37-7-510. Penalty.

Part 1

General

37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter the following definitions apply:

(1) "Board" means the board of pharmacists provided for in 2-15-1609.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state.

(5) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(6) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

(7) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons in a pharmacy having a pharmacist in charge.

(8) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(9) "Person" includes an individual, partnership, corporation, or association.

(10) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "R.Ph."

(11) "Pharmacy" means a drugstore or other established place registered by the department of professional and occupational licensing, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail.

(12) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Wholesale" means a sale for the purpose of resale.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979.

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: **En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).**

37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents such person from compounding or using drugs, medicines, chemicals, or poisons in his practice or prevents one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals, or poisons as he considers proper in the treatment of such patient;

(2) nothing herein prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing herein prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing herein applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes.

History: **En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525.**

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of practical experience.

History: **En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979.**

Part 2

Board of Pharmacists

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy and drug store;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia and the National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter; and

(c) issue certificates of "certified pharmacy" under this chapter.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part).

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 291, L. 1979, codified as 45-9-108, provided: "A statement of intent is required for this bill in that section 3 it delegates authority to the Board of Pharmacy to adopt rules.

House Bill 422 defines the offense of criminal possession of precursors to certain dangerous drugs. The bill provides that its provisions do not apply to those persons or businesses which have a legitimate reason for possessing the precursors. It is possible that certain persons, businesses or research facilities may now or at a later date have a legitimate need for these precursors. The purpose for giving rulemaking authority to the Board of Pharmacy is that it can best determine whether a person, business or research facility has a legitimate need for the precursors. It will also alleviate having to amend the statute in future sessions if it appears that someone is entitled to be exempted from the criminal provisions of the statute."

37-7-202. Salaries and expenses of board members. Each member of the board shall receive $25 a day as compensation for the performance of his services as a board member and shall be compensated in addition thereto for travel expenses, as provided for in 2-18-501 through 2-18-503, in attending meetings.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505.

37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department,

and prosecutors. (1) The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of parts 1 through 4 of this chapter.

(2) The county attorney of a county in which an offense under parts 1 through 4 of this chapter is committed shall prosecute the offender.

(3) The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under parts 1 through 4 of this chapter.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

Part 3

Licensing

37-7-301. Sale of drugs or medicines unlawful except as provided. (1) It is unlawful for any person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided.

(2) It is unlawful for any proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern in the temporary absence of such pharmacist.

(3) It is unlawful for any person to assume or pretend to the title of pharmacist or intern unless such person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter.

(4) It is unlawful for any person other than a licensed and registered pharmacist or a licensed and registered intern to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979.

37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination. On again making payment of the fee, an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) The fee for registration by reciprocity is $200.

(4) To be entitled to examination as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and a graduate of the

school of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by or a member of the American association of colleges of pharmacy; but the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board. During this period, if the applicant has passed the examination, he shall be licensed as an intern only.

(5) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter.

(6) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business. If the holder is entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate.

History: **En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part).**

37-7-303. Annual renewal fee. (1) A person licensed and registered by the department shall annually pay to the department before June 30 a renewal of registration fee of $15. A default in the payment of a renewal fee for a period of 30 days after the date it is due increases the renewal fee to $30. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

(2) The board may charge an additional fee of up to $10 for such license renewal to be used in administering the continuing education provisions of this chapter.

History: **En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).**

37-7-304. Continuing education required. (1) After July 1, 1979, no pharmacist's license may be renewed unless the pharmacist has certified, upon a form prescribed by the board, that he has obtained the number of hours of approved continuing education required by the board.

(2) Upon adequate demonstration of good cause for having failed to obtain the required number of continuing education hours through attendance of regularly accredited programs, the board shall renew the license of a pharmacist who has completed an alternative program of compliance prescribed by the board. Alternative programs shall insure competency essentially equivalent to that gained through regularly accredited continuing

education programs and may include home study courses, examinations, or any other program prescribed by the board.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.

37-7-305. Continuing education rules. The board shall adopt rules for the proper administration of the continuing education provisions of this chapter, including but not limited to:

(1) determinations as to accredited programs;

(2) the number of hours of continuing education required for license renewal; and

(3) alternative methods for fulfilling continuing education requirements as prescribed in 37-7-304(2).

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

37-7-306 through 37-7-310 reserved.

37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke, temporarily or permanently, licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of a felony;

(4) has been convicted of violating the pharmacy law; or

(5) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979.

37-7-312 through 37-7-320 reserved.

37-7-321. Store license — certified pharmacy license — suspension or revocation. (1) The department shall, on application on forms prescribed by the board and on the payment of an annual fee of $10, license stores other than pharmacies in which are sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer qualified under the laws of the state in which the manufacturer resides. The name and address of the manufacturer shall appear conspicuously on each package sold by the licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs without first having secured a license and thereafter keeping it in force by proper renewal. This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled or nonmedical articles usually sold by vendors.

(2) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee of $100, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies

operated by registered pharmacists or registered interns qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board in an amount not to exceed $50. Any default in the payment of such renewal fee for a period of 30 days after the date the same is due shall increase the renewal fee to the sum of $100. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter;

(ii) a felony; or

(iii) a violation of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059);

(d) when the person to whom the license is granted is a natural person whose pharmacist or intern license has been revoked; or

(e) when the store or pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(4) Before a license can be revoked, the holder is entitled to a hearing by the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508.

37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any abbreviation, translation, extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this chapter and duly licensed as such and in the charge of a registered pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522.

37-7-323. Penalty. Any person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter shall be guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly, and any thereof convicted shall automatically lose any license issued by the board.

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526.

37-7-324. Deposit of fees and fines. Fines paid under this chapter and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527.

Part 4

Prescriptions Regulated — Poisons

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions. (1) It shall be unlawful for any physician to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of such patients.

(2) A prescription must be so written that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any limitation of refill may be refilled at will during the time specified. No narcotic prescription may be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.

37-7-403. Poison register. The board may by a rule require registered pharmacists to keep a poison register which may require a record of poisons sold or disposed of, the signature of the purchaser, and other information required by the board. The board may provide by rule what are poisons.

History: En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.

37-7-404. Revocation of license for failure to keep or falsifying record. If a pharmacist sells or disposes of poison without keeping a record of it, keeps a false record of it, permits the sale or disposal of it without keeping a record, or otherwise violates rules made by the board, the board may revoke the license of the pharmacist.

History: En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.

37-7-405. Sale of poison without recording a misdemeanor. The sale or disposal of any poison by any registered pharmacist without keeping a record thereof in a poison register shall constitute a misdemeanor.

History: **En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.**

Part 5

Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: **En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.**

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of the official United States Pharmacopoeia or official Homeopathic Pharmacopoeia of the United States.

(7) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(8) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia and the National Formulary.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: **En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529.**

37-7-503. Rulemaking. The board of pharmacists may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: **En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535.**

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: **En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.**

37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: **En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.**

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 37-7-505 shall notify the person presenting the prescription that he may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: **En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531.**

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: **En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.**

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: **En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.**

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: **En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534.**

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacists considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacists. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;
(b) a short and plain statement of the matters asserted as charged;
(c) a statement of the amount of the penalty or penalties imposed; and
(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacists.

History: **En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536.**

CHAPTER 8

NURSING

Part 1 — General

Section
37-8-101. Purpose.
37-8-102. Definitions.
37-8-103. Exemptions — limitations on authority conferred.

Part 2 — Board of Nursing

37-8-201. Seal — board records public — legal counsel.
37-8-202. Organization — meetings — powers and duties — dual administration.
37-8-203. Compensation of members — expenses.
37-8-204. Qualifications of secretary.

Part 3 — Schools of Nursing

37-8-301. Schools of nursing — application for approval.
37-8-302. Schools of nursing — survey and approval.

Part 4 — Licensing

37-8-401. Unlawful to indicate licensure without valid license.
Sections 37-8-402 through 37-8-404 reserved.
37-8-405. Professional nursing — qualifications of applicants for license.
37-8-406. Professional nursing — examination — fee.
37-8-407. Reciprocity — professional nursing.
37-8-408. Title and abbreviation of registered nurse.
37-8-409. Midwifery — when professional nurse may practice.
Sections 37-8-410 through 37-8-414 reserved.
37-8-415. Licensed practical nursing — qualifications of applicants.
37-8-416. Licensed practical nursing — examination.
37-8-417. Reciprocity — licensed practical nursing.
37-8-418. Licensed practical nursing — application fee.
37-8-419. Title and abbreviation of licensed practical nurse.
Sections 37-8-420 through 37-8-430 reserved.
37-8-431. Renewal of license.
37-8-432. Deposit of fees.
Sections 37-8-433 through 37-8-440 reserved.
37-8-441. Denial, revocation, or suspension of license — grounds.
37-8-442. Denial, revocation, or suspension of license — procedure.
37-8-443. Violation of chapter — penalties.
37-8-444. Injunctions.

Part 1

General

37-8-101. Purpose. (1) In order to safeguard life and health, any person practicing or offering to practice professional nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

(2) In order to safeguard life and health, any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing provided for in 2-15-1610 with dual functions in the field of professional nursing and practical nursing. In matters relating to professional nursing, the board consists of five members. In matters relating to practical nursing, the board consists of eight members. The board of five members may, for convenience, be referred to as the "board", followed by the words "professional nursing administration", and the board of eight members may, for convenience, be referred to as the "board", followed by the words "practical nursing administration".

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of an act in the observation, care, and counsel of the ill, injured, or infirm or in the maintenance of health or prevention of illness of others or in the supervision and teaching of other personnel or the administration of medications and treatments prescribed by a person licensed in this state to prescribe medications and treatments, requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social sciences.

(b) "Practice of practical nursing" means the performance for compensation in the care of the ill, injured, or infirm of acts selected by and performed under the direction of a registered professional nurse or a person licensed in this state to prescribe medications and treatments, and not requiring the substantial specialized skill, judgment, and knowledge required in professional nursing.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222.

37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved schools of nursing or approved courses or by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following their graduation;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee

has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979.

Part 2

Board of Nursing

37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts under each administration. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this chapter.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974; R.C.M. 1947, 66-1223.

37-8-202. Organization — meetings — powers and duties — dual administration. (1) The board—practical nursing administration shall meet annually in the month of July and shall elect from among the eight members a president and a secretary, each of whom is a professional nurse. The board—practical nursing administration shall hold other meetings when necessary to transact its business. The board—professional nursing administration shall meet annually in July and shall hold other meetings when necessary to transact its business. A majority of the board as separately constituted for each administration, including in the majority at least one officer of the board, constitutes a quorum at any meeting; however, when sitting as the practical nursing administration, a quorum consists of a minimum of two practical nurse members and three professional nurse members, including one board officer. The department shall keep separate and complete minutes and records of the respective administration meetings and rules and orders promulgated by each administration of the board, and each administration shall exercise its functions, powers, and duties exclusive of the other, except for the identity and membership provided in this chapter.

(2) The board under each administration may make rules necessary to enable the respective administrations to administer this chapter. The board under each administration shall prescribe curricula and standards for schools and courses preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools and courses at times it considers necessary. It shall approve schools and courses that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges calling for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for this.

(3) The board under each administration may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter, and the board may fix reasonable fees for incidental services, all within the subject matter delegated to each administration by this chapter. Forms shall make clear reference to the administration for which the form is intended.

(4) Unless the context requires otherwise, the powers and duties enumerated in this chapter shall be exercised and performed by the board—professional nursing administration in all matters relating to professional nurses or professional nursing education and shall be exercised and performed by the board inclusive of the practical nursing administration in all matters relating to practical nurses and practical nursing education. The officers of the board shall also be the officers of the board inclusive of the practical nursing administration.

History: En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975; R.C.M. 1947, 66-1225.

37-8-203. Compensation of members — expenses. Each member of the board shall be paid mileage and travel expenses as provided in 2-18-501 through 2-18-503 and, in addition, $25 per day for each day actually engaged in the discharge of duties under this chapter, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings and a reasonable number of days for the preparation and administration of examinations.

History: En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd Sec. 31, Ch. 439, L. 1975; R.C.M. 1947, 66-1226.

37-8-204. Qualifications of secretary. Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall first be approved by the board and shall be:

(1) a citizen of the United States;

(2) a graduate of an approved school of nursing;

(3) a holder of at least a master's degree with postgraduate courses in nursing;

(4) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(3).

Part 3

Schools of Nursing

37-8-301. Schools of nursing — application for approval. An institution desiring to conduct a school of professional or practical nursing shall apply to the department and submit evidence that:

(1) it is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and

(2) it is prepared to meet other standards established by this law and by the board.

History: **En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974; R.C.M. 1947, 66-1238.**

37-8-302. Schools of nursing — survey and approval. (1) A survey of the school and institution or institutions with which the school is to be affiliated shall be made by the department, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that an approved school of nursing is not maintaining the standards required by law and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing.

History: **En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(1), (2).**

Part 4

Licensing

37-8-401. Unlawful to indicate licensure without valid license. It shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is a registered professional nurse or a licensed practical nurse unless such person has been duly licensed under the provisions of this chapter, and the license of such person shall be valid and in force in compliance with the provisions of this chapter.

History: **En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).**

37-8-402 through 37-8-404 reserved.

37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board, acting under the professional nursing administration, prescribes.

History: **En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974; R.C.M. 1947, 66-1227.**

37-8-406. Professional nursing — examination — fee. An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of $35 at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or if the examination is not taken, subject to deduction by the department of $1 per subject of the examination which shall be retained by the department.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(1).

37-8-407. Reciprocity — professional nursing. (1) The board—professional nursing administration may issue without examination a license to practice nursing as a registered professional nurse to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of $35 at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to final submission of the application to the board, subject to deduction of $5 to be retained by the department.

(2) An applicant may, pending licensure as a professional nurse under subsection (1) of this section, practice professional nursing as an employee of a health care agency for a period not longer than 3 months from the date the department acknowledges receiving from the nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the nurse and an affidavit by the employer where the nurse intends to practice professional nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information deemed by the board necessary for the statement.

(3) Subsection (2) does not permit the nurse to practice for more than a 3-month period or in any event after being notified by the board through the department that the application for a license has been denied or in all cases after being notified by the board through the department to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of the applicant.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(2), (3).

37-8-408. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.".

History: En. Sec. 9, Ch. 243, L. 1953; R.C.M. 1947, 66-1229.

37-8-409. Midwifery — when professional nurse may practice. (1) A person licensed under 37-8-406 or 37-8-407 who holds a certificate in nurse-midwifery from the American college of nurse-midwives may practice midwifery upon approval by the board—professional nursing administration of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of certification by the American college of nurse-midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board—professional nursing administration may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination.

History: En. 66-1246 by Sec. 2, Ch. 97, L. 1974; R.C.M. 1947, 66-1246.

37-8-410 through 37-8-414 reserved.

37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom; and

(3) meets other qualification requirements the board, acting under the practical nursing administration, prescribes.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974; R.C.M. 1947, 66-1231.

37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board, acting under the practical nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice as a licensed practical nurse.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(1).

37-8-417. Reciprocity — licensed practical nursing. (1) The board—practical nursing administration may issue a license to practice as a licensed practical nurse, without examination, to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state or territory if, in the opinion of the practical nursing administration, the applicant meets the requirements for practical nurses in this state.

(2) An applicant may, pending licensure as a practical nurse under subsection (1) of this section, practice practical nursing as an employee of a health care agency for a period of not longer than 3 months from the date

the department acknowledges receiving from the practical nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the practical nurse and an affidavit by the employer where the practical nurse intends to practice practical nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information considered by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a 3-month period or in any event after being notified by the board through the department that the application for a license has been denied or in all cases after being notified by the board through the department to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of application.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(2), (3).

37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee of $35 to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of $5 to be retained by the department.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975; R.C.M. 1947, 66-1234.

37-8-419. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.".

History: En. Sec. 15, Ch. 243, L. 1953; R.C.M. 1947, 66-1235.

37-8-420 through 37-8-430 reserved.

37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee of $10 before January 1.

(2) The board may increase or decrease the annual license fee so as to maintain in the earmarked revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31 following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the

failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975; R.C.M. 1947, 66-1236.

37-8-432. Deposit of fees. Fees and fines collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974; R.C.M. 1947, 66-1237.

37-8-433 through 37-8-440 reserved.

37-8-441. Denial, revocation, or suspension of license — grounds. Only after compliance with 37-8-442, the board, acting under the appropriate administration, may deny, revoke, or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) is guilty of a crime or gross immorality;

(3) is unfit or incompetent by reason of negligence, habit, or other causes;

(4) is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) is mentally or physically incompetent;

(6) is guilty of unprofessional conduct;

(7) has willfully or repeatedly violated this chapter.

History: En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974; R.C.M. 1947, 66-1240.

37-8-442. Denial, revocation, or suspension of license — procedure. (1) On filing a sworn complaint in writing with the board charging a person with violation of 37-8-441 as a ground for disciplinary action, the board shall fix a time and place for a public hearing before the board, to be convened in membership as the five-member board for professional nurses or as the eight-member board for practical nurses, depending on the professional or practical status of the licensee, nurse, or person against whom complaint is made.

(2) If the person charged is found guilty of the charges, the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after 1 year, in the discretion of the board.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974; R.C.M. 1947, 66-1241.

37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977; R.C.M. 1947, 66-1243.

37-8-444. Injunctions. When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin any person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953; R.C.M. 1947, 66-1244.

CHAPTER 9

NURSING HOME ADMINISTRATORS

Part 1 — General

Section

37-9-101. Definitions.

Part 2 — Board of Nursing Home Administrators

37-9-201. Organization and compensation of board.
37-9-202. Exclusive jurisdiction of board.
37-9-203. Duties of board.

Part 3 — Licensing

37-9-301. Qualifications for licensure — examination.

37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit.
37-9-303. Admission of licensees from other states.
37-9-304. Fees.
37-9-305. Renewal of registration and license.
37-9-306. Deposit of fees.
Sections 37-9-307 through 37-9-310 reserved.
37-9-311. Revocation and suspension.
37-9-312. Violation.

Part 1

General

37-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1611.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether his functions and duties are shared with one or more individuals.

(4) "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974; R.C.M. 1947, 66-3101.

Part 2

Board of Nursing Home Administrators

37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a chairman, vice-chairman, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) As compensation for his services, each member shall receive $25 a day, in addition to expenses, for each day of actual service in the performance of his duties. All members shall be allowed travel expenses as provided for in 2-18-501 through 2-18-503 and living expenses as may be approved by the board.

History: En. Sec. 7, Ch. 363, L. 1969; amd. Sec. 45, Ch. 439, L. 1975; R.C.M. 1947, 66-3107.

37-9-202. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: En. Sec. 8, Ch. 363, L. 1969; R.C.M. 1947, 66-3108.

37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards;

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators;

(6) conduct or cause to be conducted one or more courses of instruction and training sufficient to meet the requirements of this chapter and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state; instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this chapter;

(7) prescribe or approve continuing education courses.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; R.C.M. 1947, 66-3109(part).

Part 3

Licensing

37-9-301. Qualifications for licensure — examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:

(a) is of good character, of sound physical and mental health, has received a high school diploma or its equivalent;

(b) has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration, or has presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974; R.C.M. 1947, 66-3103.

37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit. (1) The department shall register and license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility.

(3) If the board determines that preliminary qualifications set forth in 37-9-301 will have been met before the next examination, it may authorize the department to issue a temporary permit for a period of 180 days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; R.C.M. 1947, 66-3104(part).

37-9-303. Admission of licensees from other states. The department may issue, at the board's discretion, a nursing home administrator's license without examination to a person who holds a current license as a nursing home administrator from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974; R.C.M. 1947, 66-3111.

37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall be required to pay a fee of $25 at the time of application.

(2) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board, not to exceed $100. A license shall expire on December 31 in the year for which it is issued and shall be renewable annually upon timely payment of the license fee.

(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount of not more than $25. An inactive registration shall expire on December 31 in the year for

which it is issued and shall be renewable annually upon timely payment of the inactive registration fee.

(4) The fee for issuing a duplicate license shall be $10.

History: En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973; R.C.M. 1947, 66-3105.

37-9-305. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year prior to the expiration of his currently valid registration and license on December 31. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board; however, if the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973; R.C.M. 1947, 66-3110.

37-9-306. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6). This fund may be used to pay the compensation and expenses of members of the board and other expenses necessary to administer this chapter.

History: En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974; R.C.M. 1947, 66-3106.

37-9-307 through 37-9-310 reserved.

37-9-311. Revocation and suspension. (1) The board shall, on receipt of a written and signed complaint, initiate an investigation of the matter contained in the complaint, subject to 37-1-101 and 37-1-102. At its next meeting, the complaint shall be presented to the board, together with the report of investigation and recommendations, and on this basis the board shall determine whether to bring charges and provide for a hearing.

(2) The board shall, for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards set pursuant to 37-9-203(1). The board may in its discretion defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed resulting in the closure of a long-term care facility.

(3) Denial of issuance or renewal, suspension, or revocation under this chapter is subject to review by the board on the timely written request for review within 30 days.

History: (1), (2)En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; Sec. 66-3109, R.C.M. 1947; (3)En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; Sec. 66-3104, R.C.M. 1947; R.C.M. 1947, 66-3104(part), 66-3109(part).

37-9-312. Violation. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973; R.C.M. 1947, 66-3112.**

CHAPTER 10

OPTOMETRY

Part 1 — General

Section

37-10-101. Definitions — practice of optometry.
37-10-102. Exemptions.
37-10-103. Use of diagnostic drugs not prohibited by pharmacy law.
37-10-104. Public agencies — discrimination prohibited.

Part 2 — Board of Optometrists

37-10-201. Organization — meetings.
37-10-202. Rulemaking power — seal.
37-10-203. Compensation of members — expenses — deposit of moneys.

Part 3 — Licensing

37-10-301. Certificate required for practice — unlawful acts — injunction.
37-10-302. Examination — qualifications — application — issuance of certificate.
37-10-303. Reciprocity.
37-10-304. Course in use of diagnostic drugs required.
37-10-305. Recording of certificate in county.
37-10-306. Certificate to be displayed in office.
37-10-307. Annual renewal — fee.
37-10-308. Continuing education required for license renewal.
Sections 37-10-309 and 37-10-310 reserved.
37-10-311. Revocation — unprofessional conduct.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations — deposit of fines.

Part 1

General

37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery.

(2) Nothing in subsection (1) allows optometrists to treat diseases of the eye.

(3) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometrists provided for in 2-15-1612; and

(b) "department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

History: (1), (2)En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; re-en. Sec. 3155, R.C.M. 1935; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977; Sec. 66-1301, R.C.M. 1947; (3)En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974; Sec. 66-1301.1, R.C.M. 1947; R.C.M. 1947, 66-1301, 66-1301.1.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: Ap. p. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; re-en. Sec. 3169, R.C.M. 1935; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977; Sec. 66-1316, R.C.M. 1947; Ap. p. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; Sec. 66-1302, R.C.M. 1947; R.C.M. 1947, 66-1302(part), 66-1316.

37-10-103. Use of diagnostic drugs not prohibited by pharmacy law. The use of drugs by a licensed optometrist for examination purposes as stated in 37-10-101 is not prohibited by Title 37, chapter 7.

History: En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977; R.C.M. 1947, 66-1301.2.

37-10-104. Public agencies — discrimination prohibited. All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance, or other health service under the laws of this state shall accept the services of licensed optometrists for any service covered by their licenses rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the governmental agencies or agents, officials, or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

History: En. 66-1317 by Sec. 7, Ch. 252, L. 1959; R.C.M. 1947, 66-1317.

Part 2

Board of Optometrists

37-10-201. Organization — meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place designated by the president, on the fourth Monday of July and, in addition, whenever and wherever the president and secretary call a meeting. The department shall keep a record of the proceedings of the board, which shall be open to public inspection.

History: En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R.C.M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; re-en. Sec. 3158, R.C.M. 1935; amd. Sec. 132, Ch. 350, L. 1974; R.C.M. 1947, 66-1304.

37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R.C.M. 1921; amd. Sec. 2, Ch. 171, L. 1925; re-en. Sec. 3157, R.C.M. 1935; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974; R.C.M. 1947, 66-1303.

37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board may receive as compensation the sum of $25 and travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office.

(2) Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R.C.M. 1921; amd. Sec. 5, Ch. 171, L. 1925; re-en. Sec. 3165, R.C.M. 1935; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975; R.C.M. 1947, 66-1311.

Part 3

Licensing

37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless he has first obtained a certificate of registration and filed it or a certified copy with the county clerk and recorder of the county of his residence;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) advertise at a price or stated terms of a price or as being free, the following:

(i) the examination or treatment of the eyes;

(ii) furnishing of optometrical services; or

(iii) furnishing a lens, lenses, contact lens, contact lenses, glasses, frames, or fitting thereof. However, this subsection does not apply to advertising goggles, sunglasses, colored glasses, or occupational eye-protective devices if they are not made with refractive values and are not advertised in connection with the practice of optometry or professional service.

(l) adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; R.C.M. 1947, 66-1302(part).

37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he must pass an examination given by the department, subject to 37-1-101. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is 18 years of age, a citizen of the United States, and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which is accredited by the international association of boards of examiners in optometry. Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application, in the manner prescribed by the board, at least 4 weeks before the examination is held, and a fee of $25 shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register which shall be kept by the department, and on the payment of a fee of $10 shall receive a certificate of registration signed by the members of the board.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(1) thru (5).

37-10-303. Reciprocity. If an applicant for a certificate of registration has been admitted to practice optometry in another state and has attained an average of 75% in his examination in the other state, he may, at the discretion of the board, be granted a certificate to practice his profession in this state without examination, on payment of all fees, if the state from which the applicant comes offers equal privileges to applicants for certificates of registration from this state.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(6).

37-10-304. Course in use of diagnostic drugs required. (1) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(2) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1) and must pass an examination as provided in subsection (4).

(3) The course referred to in subsection (1) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(4) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

History: En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977; R.C.M. 1947, 66-1305.1.

37-10-305. Recording of certificate in county. (1) Recipients of the certificate of registration shall present it for record to the county clerk and recorder of the county in which they reside and shall pay a fee of $1 to the county clerk and recorder for recording it. The county clerk and recorder shall record the certificate in a book to be provided by him for that purpose.

(2) A person licensed who moves from one county to another in this state shall, before engaging in the practice of optometry in the other county, obtain from the county clerk and recorder of the county in which the certificate of registration is recorded a certified copy of the record or else obtain a new certificate of registration from the department and shall, before commencing practice in the county, file the certificate for record with the county clerk and recorder of the county to which he moves, and pay the county clerk and recorder for recording it a fee of $1.

(3) A failure, neglect, or refusal on the part of a person holding the certificate or copy of record to file it for record for 6 months after issuance forfeits it.

(4) The department is entitled to a fee of $1 for the reissue of a certificate, and the county clerk and recorder of a county is entitled to a fee of $1 for making and certifying the copy of the record of a certificate.

History: En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R.C.M. 1921; re-en. Sec. 3162, R.C.M. 1935; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974; R.C.M. 1947, 66-1308.

37-10-306. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

History: En. Ch. 138, L. 1907; Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R.C.M. 1921; re-en. Sec. 3164, R.C.M. 1935; R.C.M. 1947, 66-1310.

37-10-307. Annual renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall annually before July 2 of each year pay to the department a renewal fee not to exceed the sum of $50, in return for which a renewal of registration shall be issued.

If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without 90 days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty of $35.

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R.C.M. 1921; amd. Sec. 4 ½, Ch. 171, L. 1925; re-en. Sec. 3161, R.C.M. 1935; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974; R.C.M. 1947, 66-1307.

37-10-308. Continuing education required for license renewal. A licensed optometrist in active practice in this state is required to attend not less than 12 hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for his license renewal. A copy of this section shall be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974; R.C.M. 1947, 66-1318.

37-10-309 and 37-10-310 reserved.

37-10-311. Revocation — unprofessional conduct. (1) The board may revoke a certificate of registration for:

(a) conviction of crime;

(b) habitual drunkenness;

(c) contagious or infectious disease;

(d) gross immorality;

(e) gross ignorance or inefficiency in his profession; or

(f) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use his certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state.

History: (1) thru (3)En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R.C.M. 1921; amd. Sec. 6, Ch. 171, L. 1925; re-en. Sec. 3166, R.C.M. 1935; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974; Sec. 66-1312, R.C.M. 1947; (4)En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927; re-en. Sec. 3166.1, R.C.M. 1935; Sec. 66-1313, R.C.M. 1947; R.C.M. 1947, 66-1312, 66-1313.

37-10-312. Duty of county attorneys and attorney general. It is the duty of a county attorney of a county wherein a violation under this chapter, except 37-10-104, is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R.C.M. 1921; re-en. Sec. 3168, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1965; R.C.M. 1947, 66-1315.

37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than $200 and not more than $500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R.C.M. 1921; amd. Sec. 8, Ch. 171, L. 1925; re-en. Sec. 3167, R.C.M. 1935; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974; R.C.M. 1947, 66-1314.

CHAPTER 11

PHYSICAL THERAPY

Part 1 — General

Section

37-11-101. Definitions.
37-11-102. Exemptions.
37-11-103. Restrictions on scope of practice.
37-11-104. Physical therapy — practiced under referral — treatment.
37-11-105. Supervision of physical therapist assistants.

Part 2 — Duties of Board and Department

37-11-201. General powers — rulemaking power — records.
37-11-202. Investigation and report of violations.
37-11-203. Travel expense — deposit of fees.

Part 3 — Licensing

37-11-301. Unauthorized representation as licensed therapist.
37-11-302. False oath or fraudulent representation to obtain license.
37-11-303. Qualifications of applicants for license.
37-11-304. Application for examination — fee.
37-11-305. Examination — scope.
37-11-306. Issuance of license — certificate as evidence.
37-11-307. Applicants licensed in other states.
37-11-308. Annual renewal of license — fee.
37-11-309. Temporary license.

37-11-310. Foreign-trained applicants.
37-11-311. Display of license.
Sections 37-11-312 through 37-11-320 reserved.
37-11-321. Refusal to issue or renew license.
37-11-322. Penalties.

Part 1

General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(3) "Physical therapy student" or "physical therapy intern" means an individual enrolled in an accredited physical therapy curriculum and who, as part of his professional, educational, and clinical training, is practicing in a physical therapy setting under the direction, guidance, and observation of a licensed physical therapist.

(4) "Physical therapy assistant" means a person who is a graduate of an accredited curriculum approved by the board and who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy.

(5) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms; any reference to any one of them in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(6) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and supervision by a licensed physical therapist who must be available for periodic checks during any procedure or treatment involving a patient.

(7) "Board" means the board of physical therapy examiners provided for in 2-15-1628.

(8) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(9) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979.

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-102. Exemptions. This chapter shall not be construed to limit or regulate any other business or profession or any services rendered or performed in connection therewith, including osteopathy, chiropractic, chiropractic physiotherapy, massage therapists, masseurs, or Swedish masseurs.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part).

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: (1)En. Sec. 13, Ch. 39, L. 1961; Sec. 66-2513, R.C.M. 1947; (2)En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; Sec. 66-2501, R.C.M. 1947; R.C.M. 1947, 66-2501(part), 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.

37-11-104. Physical therapy — practiced under referral — treatment. (1) Physical therapy is practiced under referral from physicians, osteopaths, dentists, and podiatrists and includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures, the establishment and modification of treatment, and consultative, educational, and other advisory services, and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

History: En. Sec. 4, Ch. 491, L. 1979.

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-105. Supervision of physical therapist assistants. A physical therapist assistant must practice under the direct supervision of a licensed physical therapist who is responsible for and participates in a patient's care.

History: En. Sec. 6, Ch. 491, L. 1979.

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

Part 2

Duties of Board and Department

37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses twice a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; and

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with HB 571 (Ch. 491, L. 1979) provided: "House Bill 571 creates a Board of Physical Therapists. The board would be allowed rulemaking authority.

It is the intent of the legislature that any rules adopted by the board be limited to:

1. establishing minimum state requirements and educational standards for those persons practicing physical therapy in Montana;

2. assuring physicians practicing in any branch of medicine, hospitals, and employing agencies that the persons practicing physical therapy are qualified; and

3. protecting persons needing physical therapy from fraudulent physical therapists by establishing licensing requirements which ensure that only competent physical therapists practice in Montana."

37-11-202. Investigation and report of violations. (1) The board shall:

(a) investigate every alleged violation of this chapter coming to its notice;

(b) report to the proper authority all cases that, in the judgment of the board, warrant prosecution;

(c) formulate a written complaint process for use in reporting alleged violations;

(d) assist the proper county attorney or the attorney general in the prosecution of all persons who violate any provision of Title 37, chapter 11.

(2) The attorney general shall serve as attorney for the board.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office.

(2) All fees collected by the department shall be deposited in the earmarked revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

(3) The board of medical examiners shall transfer funds in the earmarked revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the earmarked account designated as the "physical therapist account".

History: **En. Sec. 10, Ch. 491, L. 1979.**

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

Part 3

Licensing

37-11-301. Unauthorized representation as licensed therapist. A person who is not licensed under this chapter as a physical therapist or whose license has been suspended or revoked or whose license has lapsed and has not been revived who uses in connection with his name the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that he is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, represents himself as a physical therapist shall be guilty of a misdemeanor.

History: **En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979.**

Compiler's Comments

Saving clause. Sec. 19, Ch. 491, L. 1979, provided: "A license to practice physical therapy issued prior to the effective date of this act remains in effect for the period of its validity but upon expiration may be renewed only in accordance with this act."

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: **En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.**

37-11-303. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character and at least 18 years of age;

(2) have graduated from an accredited school of physical therapy approved by the board;

(3) either:

(a) pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist; or

(b) be entitled to a license without examination under 37-11-307.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979.

37-11-304. Application for examination — fee. (1) Unless entitled to a license under 37-11-307, a person who desires to be licensed as a physical therapist shall apply to the department in writing, on a form furnished by the department. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by 37-11-303.

(2) He shall pay to the department at the time of filing his application a fee as established by the board by rule. Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(3) Anyone failing to pass the required examination is entitled to a second examination within 6 months.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503.

37-11-305. Examination — scope. The department shall, subject to 37-1-101, examine applicants for licenses as physical therapists at times and places the board determines. The examinations shall embrace subjects the board considers necessary to determine the applicant's fitness.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506.

37-11-306. Issuance of license — certificate as evidence. The department shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this chapter. The department shall issue to each person licensed a license certificate, which is prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of this chapter.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507.

37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to license as a physical therapist, without examination, on the payment of the required fee, not to exceed $100, as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state. However, the board may require a written, oral, or practical examination.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979.

37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee not to exceed $50 which shall be set by board rule. A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979.

37-11-309. Temporary license. (1) On payment to the department of a fee not to exceed $100 which shall be set by board rule and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) On the submission of a written application on forms provided by it, the department shall issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This temporary license is available to an applicant only with respect to his first application for a license under 37-11-307, or to a foreign-trained physical therapist, and the license expires when the board makes a final determination with respect to the application.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by the board. The board will compare the applicant's transcript to the standards set by the American physical therapy association. If the applicant's professional education credit hours are approved by the board and the school the applicant attended was approved by the American physical therapy association at the time the applicant attended, the applicant is eligible for a temporary license prior to examination.

History: En. Sec. 16, Ch. 491, L. 1979.

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-311. Display of license. Each licensee shall display his original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where he practices physical therapy. A reproduction displayed in lieu of the above is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979.

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-312 through 37-11-320 reserved.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew, may suspend, may revoke, or take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2, of this title;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, of this title;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been declared to be seriously mentally ill by a court of competent jurisdiction and has not thereafter been released from treatment and declared not to be seriously mentally ill;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy beyond the scope and limitation of his training and education.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.

CHAPTER 12

CHIROPRACTIC

Part 1 — General

Section

37-12-101. Definitions — practice of chiropractic.
37-12-102. Exemptions — limitations on construction of chapter.
37-12-103. Duties of chiropractic practitioners.
37-12-104. Rights and limitations governing practice.

Part 2 — Board of Chiropractors

37-12-201. Organization of board — meetings — powers and duties.
37-12-202. Compensation of members — expenses.

Part 3 — Licensing

37-12-301. Unlawful to practice without license.
37-12-302. Applications — qualifications — fees.
37-12-303. Temporary permit.
37-12-304. Examinations — subjects.
37-12-305. Licensing chiropractors from other states without examination.
37-12-306. Recording of license.
37-12-307. Annual renewal of license — fee — continuing education required.
37-12-308. Deposit of fees — accounting.
37-12-309. Municipal license fee prohibited.
Sections 37-12-310 through 37-12-320 reserved.
37-12-321. Unprofessional conduct.
37-12-322. Revocation or suspension of license.
37-12-323. Reconsideration of board action — fee for restoration of license.
37-12-324. Penalty for violation.

Part 1

General

37-12-101. Definitions — practice of chiropractic. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of chiropractors provided for in 2-15-1613.

(b) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1).

37-12-102. Exemptions — limitations on construction of chapter. Nothing in this chapter shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of chapter 5 of this title or liable to any prosecution thereunder.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are regular physicians or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509.

Part 2

Board of Chiropractors

37-12-201. Organization of board — meetings — powers and duties. (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. Not more than four meetings may be held in any one year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal which shall be affixed to licenses issued and shall make rules necessary for the performance of its duties. It shall make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic. The department shall keep a record of the proceedings of the board which shall at all times be open to public inspection.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503.

37-12-202. Compensation of members — expenses. The members of the board shall receive $25 for each day during which they are actually engaged in the discharge of their duties plus mileage and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3).

Part 3

Licensing

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board, in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of regents of higher education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice. The application shall be accompanied with proofs by diplomas, certificates, etc., and satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee of $50. Like fees shall be paid for a subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505.

37-12-303. Temporary permit. When application for examination for license is filed with the department under 37-12-302, the board may authorize the department to issue a temporary permit to practice.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Examinations for a license to practice chiropractic shall be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, the subjects of which are as follows: anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer 75% of all questions asked. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter and satisfactorily passes a clinical proficiency examination before the department, subject to 37-1-101.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506.**

37-12-305. Licensing chiropractors from other states without examination. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this chapter may, in the discretion of the board, be issued a license to practice in this state without examination upon payment of the fee of $50 as herein provided.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515.**

37-12-306. Recording of license. (1) A person who receives a license from the department shall have it recorded in the office of the clerk and recorder of the county of which he resides and shall have it recorded in the counties to which he subsequently moves for the purpose of practicing chiropractic.

(2) The failure or refusal on the part of the holder of a license to have it recorded before he practices chiropractic in this state after having been notified by the department to do so is sufficient grounds to revoke or cancel a license and render it void.

(3) The clerk and recorder shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When a license is presented to him for record, he shall stamp on its face his signed memorandum of the date when the license was presented for record.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.**

37-12-307. Annual renewal of license — fee — continuing education required. A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee of not more than $50, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors consisting of monitored classroom time conducted by instructors from accredited colleges of chiropractic in subjects designated and approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees during the 6 months preceding September 1, by examination, shall be granted renewal licenses without attending the educational programs.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1).

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2).

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2).

37-12-310 through 37-12-320 reserved.

37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1.

37-12-322. Revocation or suspension of license. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The

time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation; or

(e) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2.

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee of $50 for the restoration.

History: En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3.

37-12-324. Penalty for violation. Any person who shall practice or attempt to practice chiropractic or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter or any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment. Prosecutions for the violation of this chapter shall be instituted in the district courts.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516.

CHAPTER 13

ACUPUNCTURE PRACTICE ACT

Part 1 — General

Section
37-13-101. Citation of chapter.
37-13-102. Legislative finding and purpose.
37-13-103. Definitions.
37-13-104. Partial exemptions.

Part 2 — Board of Medical Examiners

37-13-201. Powers and duties.

Part 3 — Licensing

37-13-301. License required for practice.
37-13-302. Application for examination — fee — qualifications.
37-13-303. Examination — scope — retention and inspection of examination papers — reexamination.
37-13-304. Issuance of certificate of license — license fee.
37-13-305. Admission of licensees from other states.
37-13-306. Annual renewal — fee — military exemption.
37-13-307. Deposit of moneys received.
Sections 37-13-308 through 37-13-310 reserved.
37-13-311. Denial, suspension, or revocation of license — grounds.
37-13-312. Denial, suspension, or revocation of license — procedure.
37-13-313. Reinstatement after period of suspension.
37-13-314. Application of administrative procedures.
37-13-315. Enjoining unlawful practice.
37-13-316. Penalty.

Part 1

General

37-13-101. Citation of chapter. This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

History: En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

37-13-102. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners.

(2) "Acupuncture" means the treatment of the human body by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles.

(3) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(4) "School of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403.

37-13-104. Partial exemptions. Nothing in this chapter shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this chapter.

History: En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415.

Part 2

Board of Medical Examiners

37-13-201. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke, and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: **En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.**

Part 3

Licensing

37-13-301. License required for practice. No person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this chapter.

History: **En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404.**

37-13-302. Application for examination — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board, upon the forms and in the manner as prescribed by the board, at least 30 days before the date set by the board for the commencement of the examination. An examination fee of $50 shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) a citizen of the United States or has filed a properly executed declaration of intention to become a citizen of the United States;

(c) of good moral character, as determined by the board; and

(d) a graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board.

History: **En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406.**

37-13-303. Examination — scope — retention and inspection of examination papers — reexamination. (1) Any applicant meeting the requirements of this chapter shall be admitted to an assembled examination to be conducted by the board. An examination shall be held at least twice a year. The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice acupuncture. The examination shall be in writing, insofar as the board shall deem practicable, and shall cover such subjects as prescribed in the curriculum and taught in the schools which offer courses leading to the degree of doctor of acupuncture, master of acupuncture, master acupuncturist, or their equivalent. Demonstration of the applicant's skill in the practice of acupuncture may also be required.

(2) Examination papers of any applicant shall be retained 2 years by the secretary of the board and may then be destroyed. While retained the examination papers shall be open to inspection only by board members, the applicant, or by some person appointed by the applicant to examine them or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(3) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of $25 for each examination.

History: **En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407.**

37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a $20 license fee, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408.

37-13-305. Admission of licensees from other states. A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter, upon payment of the license fee of $20 as herein provided.

History: En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409.

37-13-306. Annual renewal — fee — military exemption. (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed without examination upon request of the licensee. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee of $20. The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license.

(2) On or before December 1 of each calendar year, the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee of $5, shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee of $5 for each year following the cancelling of the license.

(6) Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

History: En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410.

37-13-307. Deposit of moneys received. All moneys received under this chapter shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this chapter.

History: En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.

37-13-308 through 37-13-310 reserved.

37-13-311. Denial, suspension, or revocation of license — grounds. The board may refuse to issue or may suspend or revoke a license issued pursuant to this chapter for any one or any combination of the following causes:

(1) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance as shown by a certified copy of record of the court, subject to chapter 1, part 2 of this title;

(2) being adjudicated incompetent or seriously mentally ill;

(3) sustaining a physical or mental disability which renders further practice dangerous;

(4) habitual drunkenness or habitual addiction to the use of a controlled substance;

(5) gross malpractice;

(6) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public or which is unbecoming a person licensed to practice under this chapter;

(7) obtaining or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(8) advertising by means of knowingly false or deceptive statement;

(9) advertising, practicing, or attempting to practice under a name other than one's own;

(10) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this chapter; or

(11) violating or attempting to violate or assisting or abetting the violation of or conspiring to violate any provision of this chapter.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).

37-13-312. Denial, suspension, or revocation of license — procedure. (1) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state charging him with the commission of any of the offenses set forth in 37-13-311, which complaint shall set forth a specification of the charges. When the complaint is filed, the secretary shall mail a copy to the person so accused at his last address of record with the board, together with a written notice of the time and place of a hearing thereon, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(2) At the time and place fixed for a hearing before the board as provided in subsection (1) of this section or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall, after consideration, adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in 37-13-311 do not exist with reference to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board finds that the conditions referred to in 37-13-311 do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion considers proper.

(3) The secretary of the board in all cases of revocation, suspension, or probation shall enter in its records the facts of the action and of any subsequent action of the board with respect thereto.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).

37-13-313. Reinstatement after period of suspension. Upon the expiration of the term of suspension, the licensee shall be reinstated by the board provided the licensee furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as herein provided, which revocation is final and absolute.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).

37-13-314. Application of administrative procedures. (1) The contested case procedures of the Montana Administrative Procedure Act apply to the notice and hearing required by 37-13-312 and 37-13-313, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(2) Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

History: (1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414.

37-13-316. Penalty. Any person who violates any of the provisions of this chapter or the rules of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

History: En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416.

CHAPTER 14

RADIOLOGIC TECHNOLOGISTS

Part 1 — General

Section

37-14-101. Purpose.
37-14-102. Definitions.

Part 2 — Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings — quorum.
37-14-202. Rulemaking power.

Part 3 — Licensing

37-14-301. Limitation of license authority — exemptions.
37-14-302. Qualifications.
37-14-303. Examination — application fee.
37-14-304. Licensure by endorsement.
37-14-305. Issuance of license or permit — fee.
37-14-306. Permits.
37-14-307. Duty to carry, display license or permit.
37-14-308. Issuance of other documents.
37-14-309. Replacement documents.
37-14-310. Biennial renewal — fee — reissuance of license.
37-14-311. Deposit of fees.
37-14-312. Licensure by demonstration of proficiency.
Sections 37-14-313 through 37-14-320 reserved.
37-14-321. Revocation or suspension of license.
37-14-322. Inspections.
37-14-323. Penalty for violation.

Part 1

General

37-14-101. Purpose. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.1.

37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1614.

(2) "Department" means the department of professional and occupational licensing.

(3) "License" means an authorization to apply x-ray radiation to persons issued by the department of professional and occupational licensing.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Permit" means an authorization which may be granted by the board to apply x-ray radiation to persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(6) "Radiologic technologist" means a person other than a licensed practitioner who applies diagnostic x-ray radiation to persons.

History: En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.

Part 2

Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings — quorum. (1) Board members may be compensated as determined by the board, but not to exceed $25 a day, for official business. Board members shall be reimbursed for their travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on official business of the board.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business.

History: En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977; R.C.M. 1947, 66-3703.

37-14-202. Rulemaking power. The board may promulgate rules necessary to carry out the provisions of this chapter and adjudicate contested cases under it.

History: En. 66-3704 by Sec. 5, Ch. 336, L. 1975; R.C.M. 1947, 66-3704.

Part 3

Licensing

37-14-301. Limitation of license authority — exemptions. (1) No person may apply x-ray radiation to a person unless licensed under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the direct supervision of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may apply x-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such examinations or treatments.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975; R.C.M. 1947, 66-3702.

37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist, other than those qualifying under 37-14-312, shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist, including those qualifying under 37-14-312, shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977; R.C.M. 1947, 66-3705.

37-14-303. Examination — application fee. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board but not to exceed $50, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(1) thru (3).

37-14-304. Licensure by endorsement. The board may accept in lieu of its own examination a certificate of the American registry of radiologic technologists (ARRT) or a certificate, registration, or license issued by another state whose qualifications are at least equal to those set forth in this chapter.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(4).

37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board, not to exceed $50, and has met the requirements of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part).

37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of a physician specializing in radiology approved by the board, the capability of performing high-quality x-ray examinations without endangering public health and safety. Permits issued under provisions of this section and 37-14-305 shall specify x-ray examinations that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions for original issuance.

(2) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(3) The board shall issue temporary permits to uncertified persons to perform x-ray examinations when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray examinations without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(2) thru (4).

37-14-307. Duty to carry, display license or permit. Each radiologic technologist shall carry his license or permit while at work. The license or permit shall be displayed on request.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(5).

37-14-308. Issuance of other documents. The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(6).

37-14-309. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.1.

37-14-310. Biennial renewal — fee — reissuance of license. (1) Licenses expire on December 31 of the first even-numbered year following the year of their issuance and on every even-numbered year thereafter.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such

information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.

37-14-311. Deposit of fees. Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board in administering this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part).

37-14-312. Licensure by demonstration of proficiency. The board shall issue a license to an applicant if he is a student engaged in a course of x-ray technology on October 9, 1976, subsequently completes the course, and can demonstrate proficiency to the satisfaction of the board.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977; R.C.M. 1947, 66-3708.1(1)(b).

37-14-313 through 37-14-320 reserved.

37-14-321. Revocation or suspension of license. A license or permit may be suspended for a fixed period or may be revoked, or such technologist may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical conduct, as defined by rules promulgated by the board, or has been guilty of incompetence or negligence in his activities as a radiologic technologist;

(5) has continued to perform as a radiologic technologist without obtaining a license or license renewal as required by this chapter.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975; R.C.M. 1947, 66-3710.

37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of professional and occupational licensing;

(3) the department of health and environmental sciences.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975; R.C.M. 1947, 66-3711.

37-14-323. Penalty for violation. A person or the employer of a person who violates any provisions of this chapter or rules adopted under this chapter is guilty of an offense and shall be fined not to exceed $500. Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975; R.C.M. 1947, 66-3712.

CHAPTER 15

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

Part 1 — General

Section

37-15-101. Purpose.
37-15-102. Definitions.
37-15-103. Exemptions.

Part 2 — Board of Speech Pathologists and Audiologists

37-15-201. Meetings.
37-15-202. Powers and duties of board and department.
37-15-203. Compensation and expenses.

Part 3 — Licensing

37-15-301. License required.
37-15-302. Application forms.
37-15-303. Qualifications.
37-15-304. Examination.
37-15-305. Practice pending disposition of application — waiver — provisional license.
37-15-306. Issuance of license.
37-15-307. Application and examination fee — license fee.
37-15-308. Renewal.
37-15-309. Continuing education required for renewal.
37-15-310. Deposit of moneys received.
37-15-311. Municipal tax prohibited.
37-15-312. Department to publish list of licensees.
Sections 37-15-313 through 37-15-320 reserved.
37-15-321. Denial, suspension, or revocation of license — reinstatement.
37-15-322. Penalty.
37-15-323. Injunction of unlawful practice.

Part 1

General

37-15-101. Purpose. The legislature of the state of Montana declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech pathologists and audiologists and to help assure the availability of the highest possible quality speech pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of speech pathologists and audiologists provided for in 2-15-1615.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Speech pathologist" means one who practices speech pathology and who presents himself to the public by any title or description of services incorporating the words "speech pathologist", "speech correctionist", "speech therapist", "speech clinician", "language pathologist", "language therapist", "language clinician", or any similar title or description of services.

(4) "Speech pathology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed speech pathologist.

(5) "Audiologist" means a person who practices audiology and who presents himself to the public by any title or description of services incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of services.

(6) "Audiology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(7) "Practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of evaluating, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals.

(8) "Practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, or auditory function, including auditory behavior related to hearing impairment.

(9) "Association" means the Montana speech and hearing association.

(10) "ASHA" means the American speech and hearing association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.

(12) "Provisionally licensed speech pathologist or audiologist" means those speech pathologists or audiologists currently practicing the profession in the state who do not meet the minimum requirements for licensure as defined in this chapter and who are eligible for provisional licensure conditioned on biennial evidence of satisfactory progress toward meeting the requirements for licensure as provided in this chapter. This provisional licensure, as

defined in this chapter, may exist for no longer than 6 years from July 1, 1975, under any circumstance.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979.

37-15-103. Exemptions. (1) Nothing in this chapter shall prevent a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this chapter shall restrict or prevent activities of a speech pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and shall not offer speech pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, such persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter shall restrict activities and services of a student in speech pathology or audiology from pursuing a course of study in speech pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study, and no fee shall accrue directly or indirectly to the student. These persons shall be designated by the title "speech pathology (or audiology) intern", "speech pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this chapter shall restrict a person from another state from offering speech pathology or audiology services in this state if such services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to such limitations as the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech pathology or audiology or its equivalent may offer speech pathology or audiology services in this state for no more than 30 days in any calendar year if such services are performed in cooperation with a speech pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter shall restrict any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this chapter shall restrict any person who holds a certificate of registration in this state as a hearing aid dealer from performing

those functions for which he qualifies and which are described in Title 37, chapter 16.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904.

Part 2

Board of Speech Pathologists and Audiologists

37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance may a meeting of three board members who are exclusively speech pathologists or exclusively audiologists be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(1), (4).

37-15-202. Powers and duties of board and department. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this chapter;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal, shall be prima facie evidence of the validity of such documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(3), (5) thru (7).

37-15-203. Compensation and expenses. Each board member shall receive travel expenses and mileage incidental to board meetings and business, as provided for in 2-18-501 through 2-18-503, as amended. Compensation may be paid each board member not otherwise compensated in the amount of $25 per day when attending board meetings.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(2).

Part 3

Licensing

37-15-301. License required. (1) A license shall be issued to qualified persons either in speech pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications, and in such instances the license fee shall be as though for one license.

(2) No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

History: En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903.

37-15-302. Application forms. Application for examination for licensing a speech pathologist or audiologist shall be made upon forms prescribed by the board.

History: En. 66-3908 by Sec. 9, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(1).

37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; R.C.M. 1947, 66-3906(part).

37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant shall be examined for speech pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech pathology or audiology as it considers appropriate. It may also examine the candidate with regard to his professional skills and his judgment in the utilization of speech pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations shall be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: (1) thru (6)En. 66-3909 by Sec. 10, Ch. 543, L. 1975; Sec. 66-3909, R.C.M. 1947; (7)En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; Sec. 66-3906, R.C.M. 1947; R.C.M. 1947, 66-3906(part), 66-3909(1) thru (6).

37-15-305. Practice pending disposition of application — waiver — provisional license. (1) A speech pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state may perform activities and services of a speech pathology or audiology nature without a valid license pending disposition of application.

(2) Prior to July 1, 1976, a provisional license may be issued to an individual who holds a bachelor's degree with a major in speech pathology or audiology, who has accumulated 175 clock hours of clinical practicum, and who has worked in this state as a speech pathologist or audiologist for at least 1 academic year. The provisionally licensed speech pathologist or audiologist must work under the direct supervision of a licensed or certified speech pathologist or audiologist. The extent to which direct supervision will be provided for the provisionally licensed speech pathologist or audiologist will be determined by the supervising clinician. Generally, the supervising speech pathologist or audiologist shall provide direct assistance to the provisionally licensed speech pathologist or audiologist at least 4 days per month. Most of the contacts by the supervising speech pathologist or audiologist shall be in person, but other avenues of contact may be made. Those persons granted provisional licensure shall complete the academic, clinical practicum, and examination requirements for licensure within 6 years after July 1, 1975. Twelve quarter hour credits of additional professional training towards licensure qualifications, or any other proposed educational plan that leads to the same goal as presented to and approved by the board, must be obtained every 2 years for renewal of provisional licensure. Provisionally licensed speech pathologists or audiologists who have not attained appropriate eligibility status within 6 years of July 1, 1975, will no longer be eligible to practice speech pathology or audiology in the state of Montana, except for those persons granted certification under subsection (5) of this section, but may work as speech pathology or audiology aides, as defined in this chapter.

(3) The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

(4) The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American speech and hearing association in the area for which they are applying for a license.

(5) The board shall, on presentation and documentation in writing by a petitioner, have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this chapter. This prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case.

History: **En. 66-3908, 66-3909 by Secs. 9, 10, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(3), (6) thru (8), 66-3909(7).**

37-15-306. Issuance of license. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this chapter, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

History: **En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(1) thru (3).**

37-15-307. Application and examination fee — license fee. The amount of fees prescribed in connection with a license as a speech pathologist or audiologist shall be as follows, the exact fee to be determined by the board each year based on costs and predicted expenditures:

(1) application and examination fee for a license, no less than $50 or more than $100;

(2) license fee and renewal thereof, no less than $25 or more than $100.

History: **En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(1).**

37-15-308. Renewal. (1) Each licensed speech pathologist or audiologist shall on or before July 31 of the year of expiration of his license pay to the board the fee for the renewal of his license.

(2) Renewal will be every two years beginning on July 1 of the appropriate year.

(3) The department shall notify each person licensed under this chapter relative to the date of expiration of his license and the amount of the renewal fee. This notice shall be mailed to each licensed speech pathologist or audiologist at least 1 month before the expiration of the license.

(4) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor.

(5) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(6) Application for renewal following a lapse of 1 year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(7) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(8) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(9) A person who fails to renew his license within the 4 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of this chapter.

History: En. 66-3907, 66-3910 by Secs. 8, 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(4) thru (7), 66-3910(3) thru (7).

37-15-309. Continuing education required for renewal. The board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(9).

37-15-310. Deposit of moneys received. All moneys received by the department shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the board and subject to 37-1-101(6).

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(2).

37-15-311. Municipal tax prohibited. No license tax shall be imposed upon speech pathologists or audiologists by a municipality or any other subdivision of the state.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(8).

37-15-312. Department to publish list of licensees. Each year the department shall publish a list of all persons licensed under this chapter, containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public upon request.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(8).

37-15-313 through 37-15-320 reserved.

37-15-321. Denial, suspension, or revocation of license — reinstatement. (1) The board may refuse to issue or renew a license or may suspend or revoke the license of any licensee if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes but is not limited to:

(a) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(b) being found guilty of unprofessional conduct or having violated ethical standards of practice established pursuant to this chapter;

(c) violating any lawful order or rule of the board;

(d) violating any provision of this chapter.

(2) Where an applicant or licensee has been convicted of a felony or a crime involving moral turpitude, the board may suspend or revoke his license or may decline to issue a license when:

(a) the time for appeal has elapsed;

(b) the judgment of conviction has been affirmed on appeal;

(c) an order granting probation is made suspending the imposition of sentence.

(3) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures which comply with all applicable requirements of the Montana Administrative Procedure Act.

(4) One year after denial, suspension, or revocation of a license, a person may reapply for a license. The board may in its discretion require an examination for reinstatement.

History: En. 66-3911 by Sec. 12, Ch. 543, L. 1975; R.C.M. 1947, 66-3911.

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975; R.C.M. 1947, 66-3912.

37-15-323. Injunction of unlawful practice. The practice of speech pathology or audiology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975; R.C.M. 1947, 66-3913.

CHAPTER 16

HEARING AID DISPENSERS

Part 1 — General

Section

37-16-101. Declaration of policy.
37-16-102. Definitions.
37-16-103. Exemptions.

Part 2 — Board of Hearing Aid Dispensers

37-16-201. Meetings — quorum — organization.
37-16-202. Powers and duties.
37-16-203. Compensation of members — expenses.

Part 3 — Regulatory Provisions

37-16-301. Permanent place of business in state necessary — exception — records — notice.
37-16-302. Sale of dispensing business.
37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion.

Part 4 — Licensing

37-16-401. License required.

37-16-402. Application — qualifications — fee.
37-16-403. Examination — time and place.
37-16-404. Examination — subject areas.
37-16-405. Temporary license.
37-16-406. Admission of licensees from other states.
37-16-407. Renewal of license — fee.
37-16-408. Deposit of fees.
Sections 37-16-409 and 37-16-410 reserved.
37-16-411. Revocation or suspension of license.
37-16-412. Revocation, suspension, or denial — notice and hearing.
37-16-413. Penalty for unlawful practice — injunction.

Part 1

General

37-16-101. Declaration of policy. The selling and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objects and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001.

37-16-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1616.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "License" means a regular or temporary license.

(4) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(5) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003.

37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009.

Part 2

Board of Hearing Aid Dispensers

37-16-201. Meetings — quorum — organization. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this chapter. Three members, including either the otolaryngologist or the audiologist, constitute a quorum.

(2) Members of the board shall annually designate one member to serve as chairman and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006.

37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale and fitting of hearing aids in this state who is not licensed under this chapter.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005.

37-16-203. Compensation of members — expenses. Each member of the board shall receive $20 a day compensation when actually engaged in the discharge of his official duty and in addition shall be reimbursed for travel expense, as provided for in 2-18-501 through 2-18-503, in attending a meeting of the board in the state.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979.

Part 3

Regulatory Provisions

37-16-301. Permanent place of business in state necessary — exception — records — notice. (1) A person who obtains a license to dispense hearing aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids.

(2) Subsection (1) of this section does not apply to persons who obtain a license as salespeople representing a licensed hearing aid dispenser.

(3) The department shall keep a record of the places of practice of persons who hold regular licenses or temporary licenses. A notice required to be given by the board or department to a person who holds a regular or temporary license may be given by mailing it to him at the address last given by him to the department.

History: **En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015.**

37-16-302. Sale of dispensing business. A business dispensing hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: **En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018.**

37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion. (1) Any person who practices the fitting or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain the seller's signature and show the name and address of his regular place of business and the number of his license, together with a description of the make and type of the hearing aid furnished and the amount charged, with terms of guarantee, if any. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used, or reconditioned.

(2) Any person practicing the fitting and sale of hearing aids shall, when dealing with a person 18 years of age and under or when the aid is to be purchased with state funds, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(3) Such receipt must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

History: **En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008.**

Part 4

Licensing

37-16-401. License required. A person may not engage in the sale or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current regular or temporary license issued by the department.

History: **En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007.**

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee of $50 and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school or has continuously engaged in the practice of fitting and dispensing hearing aids during the 3 years preceding the date of application;

(3) is free of contagious or infectious disease.

History: **En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010.**

37-16-403. Examination — time and place. (1) An applicant for a license who is notified by the department that he has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

(2) The department shall, subject to 37-1-101, give examinations required to permit applicants to be examined within 30 days following the board's approval of the application for examination. Examination may be delayed on notice to the department under this section.

History: **En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011.**

37-16-404. Examination — subject areas. The examination provided in 37-16-403(1) shall consist of a test of knowledge and practical tests of proficiency, where they apply, in the following areas as they pertain to the fitting of hearing aids:

(1) acoustics:
(a) general principles;
(b) the decibel;
(c) hearing and speech;
(2) the human ear:
(a) external;
(b) middle;
(c) inner;
(3) the hearing process;
(4) disorders of hearing:
(a) conductive;
(b) sensorineural;
(c) central;
(d) psychogenic;
(5) audiometry:
(a) pure tone;
(b) theory;
(c) procedures;
(d) speech;
(6) the hearing analysis:
(a) audiogram;
(b) auditory area;
(7) hearing aids:
(a) history;
(b) characteristics;
(c) components;
(8) practical use of the otoscope:
(a) earmold;

(b) impression;
(9) fittings:
(a) hearing aid;
(b) earmold;
(10) delivery and checkup; or
(11) any change as deemed necessary by the board.

History: **En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012.**

37-16-405. Temporary license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the examination under 37-16-403 may apply to the department for a temporary license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee of $25, the department shall issue a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending 30 days after the conclusion of the next examination given after the date of issue.

(3) No temporary license may be issued by the department unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who holds a valid license issued under this chapter.

(4) If a person who holds a temporary license does not take the next examination given after the date of issue, the temporary license may not be renewed except for a good cause shown to the satisfaction of the board.

(5) If a person who holds a temporary license takes and fails to pass the next examination given after the date of issue, the board may authorize the department to renew the temporary license for a period ending 30 days after the results of the next examination given after the dates of renewal are announced. In no event may more than two renewals be permitted. The fee for renewal is $30.

History: **En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014.**

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of fitting and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to dispense and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to submit to or undergo a qualifying examination or the like, other than the payment of fees, if the person complies with all other requirements of this chapter.

History: **En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019.**

37-16-407. Renewal of license — fee. A person who practices the fitting of hearing aids shall annually pay to the department a fee, not to exceed $80, as set by the board for a renewal of his license. The fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is not required to submit to an examination as a condition of renewal for a 3-year period after suspension.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016.

37-16-408. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1).

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license. A person registered under this chapter may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) being convicted of a felony, subject to chapter 1, part 2 of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) the personal use of a false name or alias in the practice of his profession, with fraudulent intent;

(4) violating any of the provisions of this chapter;

(5) obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate. The term "hearing center" shall be discontinued in accordance with the code of ethics of the national hearing aid society.

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(12) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(13) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(14) selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the fitting or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than $500 or be imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021.

CHAPTER 17

PSYCHOLOGISTS

Part 1 — General

Section

37-17-101. Purpose.
37-17-102. Definitions.
37-17-103. Limitation of license authority.
37-17-104. Exemptions.

Part 2 — Board of Psychologists

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal.
37-17-202. Powers.

Part 3 — Licensing

37-17-301. License required.
37-17-302. Application — qualifications.
37-17-303. Examination.

37-17-304. Admission of licensees from other states.
37-17-305. Issuance of license.
37-17-306. Annual renewal.
37-17-307. Fees — deposit of fees.
37-17-308. Department to publish list of licensees.
Sections 37-17-309 and 37-17-310 reserved.
37-17-311. Denial or revocation of license — grounds — notice and hearing.
37-17-312. Penalty.
37-17-313. Injunction for unlawful practice.

Part 1

General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: **En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.**

37-17-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1617.

(3) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(4) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (5) of this section to individuals, groups, corporations, or the public for compensation or fee.

(5) "Practice of psychology" means the application of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and behavior modification, including psychotherapeutic techniques and hypnosis; and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation.

History: **En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979.**

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: **En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).**

37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training and the codes of ethics of their respective professions if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979.

Part 2

Board of Psychologists

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members. The department shall keep a record of the board's proceedings.

(2) Each board member shall receive travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incidental to board meetings.

(3) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5).

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses therefor;

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: (1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207.

Part 3

Licensing

37-17-301. License required. A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1).

37-17-302. Application — qualifications. (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) is at least 18 years of age;

(c) is of good moral character;

(d) has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program;

(e) has completed at the time of application a minimum of 2 years of experience in the practice, research, or teaching of psychology. One year of this experience shall be post doctoral.

History: **En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2).**

37-17-303. Examination. (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to 37-1-101. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be reexamined at a subsequent examination on the payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: **En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2).**

37-17-304. Admission of licensees from other states. A license without examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology.

History: **En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3).**

37-17-305. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

History: **En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).**

37-17-306. Annual renewal. (1) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his

license, but the fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5).

37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, none of which is refundable:

(a) application fee, $25 to $50;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee, $10;

(d) renewal fee, $20 to $50.

(2) The board may set the application fee and the annual renewal fee annually within the above limits.

(3) The initial certificate fee shall be prorated as follows:

(a) if the certificate is issued between January 2 and March 31, $10;

(b) if the certificate is issued between April 1 and June 30, $7.50;

(c) if the certificate is issued between July 1 and September 30, $5;

(d) if the certificate is issued between October 1 and January 1, $2.50.

(4) Renewal certificates shall be secured annually and dated January 2.

(5) Fees received by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1971; R.C.M. 1947, 66-3211.

37-17-308. Department to publish list of licensees. The department shall publish yearly a list of psychologists licensed under this chapter. This list shall contain names and addresses and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public on request.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6).

37-17-309 and 37-17-310 reserved.

37-17-311. Denial or revocation of license — grounds — notice and hearing. (1) A license applied for or issued under this chapter may be refused or revoked by the board on proof that the person to whom the license was issued:

(a) has been convicted of a felony;

(b) has been guilty of fraud or deceit in securing the license or a renewal;

(c) is using a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(d) has been guilty of unprofessional conduct as defined by the code of ethics published by the American psychological association.

(2) The board may not revoke or refuse to issue or renew a license for any cause other than failure to pay fees unless the person is given notice and opportunity for a hearing before the board.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or by both.

History: En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1).

CHAPTER 18

VETERINARY MEDICINE AND TECHNOLOGY

Part 1 — General

Section

37-18-101. Definitions.
37-18-102. Veterinary medicine defined.
37-18-103. Definitions relating to veterinary technology.
37-18-104. Exemptions.

Part 2 — Board of Veterinarians

37-18-201. Organization — meetings.
37-18-202. Powers of board and department — examinations — prosecutions.
37-18-203. Compensation and expenses of members — department records of board proceedings and licensees.

Part 3 — Licensing—Veterinary Medicine

37-18-301. License required.
37-18-302. Application — qualification — fee.
37-18-303. Examination — temporary permit pending examination.
37-18-304. Reciprocity.
37-18-305. License — issuance and contents.
37-18-306. Display of license and certificate.
37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.
37-18-308. Deposit of money.
Sections 37-18-309 and 37-18-310 reserved.
37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing.

Part 4 — Licensing—Veterinary Technology

37-18-401. Application — fee — qualifications of applicants.

37-18-402. Examination — issuance of license upon passage.
37-18-403. Licensure without examination.
37-18-404. Technician to practice under supervision.
37-18-405. Renewal — board to be kept informed of employer.
Sections 37-18-406 through 37-18-410 reserved.
37-18-411. Denial, suspension, or revocation of license.

Part 5 — Remedies for Violation

37-18-501. Penalty.
37-18-502. Injunction.

Part 1

General

37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinarians provided for in 2-15-1618.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture or ova or embryo transfer on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(3), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104.

History: (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2.

37-18-103. Definitions relating to veterinary technology. As used in this chapter, the following definitions apply:

(1) "Veterinary technician" means a person determined by the board to be qualified by education and training to provide limited veterinary services under the direct supervision of a licensed veterinarian who shall be responsible for the performance of that technician; provided, however, that nothing in this chapter permits the board or any licensed veterinarian to delegate any of the following duties or functions:

(a) diagnosis;

(b) prognosis;

(c) prescription; or

(d) surgery.

(2) "Direct supervision" means an order by the supervising licensed veterinarian to the veterinary technician, with notice to the client, to perform a specific function for that client within the veterinarian's routine practice, with a follow-up by the veterinarian to evaluate and determine the quality and effectiveness of the function performed and with all billing for such services to be made by the veterinarian.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

37-18-104. Exemptions. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees. However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of 6 months from the date of completion of the third year of study.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

(4) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

History: **En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211.**

Part 2

Board of Veterinarians

37-18-201. Organization — meetings. (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer and shall hold at least two regular meetings each year. At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant.

History: **En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2).**

37-18-202. Powers of board and department — examinations — prosecutions. (1) The board may adopt rules and orders necessary for the performance of its duties, prescribe forms for application for examination and license, and prepare examinations. The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

(2) The board of veterinarians may also issue to qualified applicants licenses for the practice of veterinary technology, to be known as veterinary technicians.

(3) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.

History: **(1), (3)En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; Sec. 66-2202, R.C.M. 1947; (2)En. 66-2213 by Sec. 1, Ch. 135, L. 1975; Sec. 66-2213, R.C.M. 1947; R.C.M. 1947, 66-2202(3), (4), 66-2213(1).**

37-18-203. Compensation and expenses of members — department records of board proceedings and licensees. (1) Each member of the board is entitled to receive travel expenses as provided for in 2-18-501 through 2-18-503. In addition, each member of the board may receive compensation of $25 per day for attending board meetings.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records and are at all times open to public inspection.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2).

Part 3

Licensing — Veterinary Medicine

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

37-18-302. Application — qualification — fee. A citizen of the United States desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set annually by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979.

Compiler's Comments

Effective date. Sec. 4, Ch. 431, L. 1979, provided: "This act is effective upon passage and approval." Approved March 31, 1979.

37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held in January and June of each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set annually by the board and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979.

Compiler's Comments

Effective date. Sec. 4, Ch. 431, L. 1979, provided: "This act is effective upon passage and approval." Approved March 31, 1979.

37-18-304. Reciprocity. (1) The board may make arrangement with similar boards in the several states, insofar as practicable, whereby due credit for state and territorial licenses may be allowed in this state to the licensees of these boards who desire to secure a license to practice veterinary medicine in this state and by which licensees of the board in this state may secure credit for license issued by this board when the licensees desire to secure a license to practice in another state or territory. No arrangement may be made under this section which may lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) No license may be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least 1 year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of 37-18-304 if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal and shall be signed by the president and secretary-treasurer of the board and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, or investigation under reciprocity arrangements, he has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2).

37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1).

37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure from the department before July 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board, not exceeding the sum of $25, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination during the 6 months preceding July 1 shall be granted renewals without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before July 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration

fee provided for in this section and an additional restoration fee, not in excess of $25, as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements of all licensees recited above. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5).

37-18-308. Deposit of money. Money received under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3).

37-18-309 and 37-18-310 reserved.

37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing. (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) fraud or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to chapter 1, part 2, of this title;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to chapter 1, part 2, of this title, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine;

(f) gross malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this part or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any cause unless the person accused has been given notice and a public hearing by the board.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210.

Part 4

Licensing — Veterinary Technology

37-18-401. Application — fee — qualifications of applicants. Each candidate for examination as a veterinary technician shall file, in his full name, an application for examination with the department at least 30 days before the date set by the board for the commencement of the examination and at the time of making the application shall pay the department a fee commensurate with the costs of the examinations and set annually by the board. The applicant shall furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of veterinary technology offering a course of study recognized and approved by the board of veterinarians, as well as such other information as may be required by the board.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

Compiler's Comments

Effective date. Sec. 4, Ch. 431, L. 1979, provided: "This act is effective upon passage and approval." Approved March 31, 1979.

37-18-402. Examination — issuance of license upon passage. (1) The board shall adopt uniform rules, within the limitations of this part, governing the matter of examinations for license to practice veterinary technology in the state of Montana, which examinations shall be open to any applicant meeting the requirements of this part, and shall also provide in such rules for giving reasonable notice of the time and place where examinations shall be held.

(2) Each applicant who passes the examination prescribed by the board shall be granted a license as a veterinary technician and shall be registered as such in a record kept by the board and shall receive a certificate in a form to be prescribed by the board.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

37-18-403. Licensure without examination. A person who can produce satisfactory evidence that he has been employed as a veterinary technician in the office of a regularly licensed veterinarian in the state of Montana for 2 or more years prior to March 25, 1975, may, upon payment of a fee of $25, be granted a certificate to practice by the board of veterinarians; provided that if the board in its discretion finds that animal health and the public interest so require, the board may require the applicant to pass a practical examination in veterinary technology. A certificate must be secured before such person may continue practice as a veterinary technician.

History: **En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5).**

37-18-404. Technician to practice under supervision. A licensed veterinary technician may practice in the office of and under the direct supervision of a legally licensed and actively practicing veterinarian or in a department of state government in which a legally licensed veterinarian is present to exercise direct supervision.

History: **En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).**

37-18-405. Renewal — board to be kept informed of employer. (1) Each licensed veterinary technician shall annually on or before July 1 procure from the board a certificate of annual registration. The fee for annual registration shall be fixed by the board, not exceeding the sum of $10. Failure of a licensee to procure a certificate of registration on or before July 1 shall constitute a forfeiture of the license.

(2) Each licensed veterinary technician shall keep the board informed of his address, the name and address of the licensed veterinarian or of the state department which is his employer, and such other information as the board may by rule require.

History: **En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9).**

37-18-406 through 37-18-410 reserved.

37-18-411. Denial, suspension, or revocation of license. The board may, with respect to the practice of veterinary technology, deny or suspend or revoke any license or certificate of registration upon the grounds that the applicant or veterinary technician is guilty of:

(1) soliciting patients for any practitioner of the healing arts;

(2) soliciting or receiving any form of compensation from any person other than his registered employer for performing as a veterinary technician;

(3) willfully or negligently divulging a professional confidence or discussing a veterinarian's diagnosis or treatment without the express permission of the veterinarian;

(4) any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, is conclusive evidence, provided that at the conclusion of state supervision imposed as a consequence of such conviction the board may not consider the conviction upon reapplication for a license or certificate.

(5) the habitual or excessive use of intoxicants or drugs;

(6) fraud or misrepresentation in applying for or procuring a certificate of qualification to perform as a veterinary technician or in applying for or procuring an annual registration;

(7) impersonating another person registered as a veterinary technician or allowing any person to use his certificate of qualification or registration;

(8) aiding or abetting the practice of veterinary medicine by a person not licensed by the board;

(9) gross negligence in the performance of duties, tasks, or functions assigned to him by a licensed veterinarian; or

(10) manifest incapacity or incompetence to perform as a veterinary technician.

History: En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

Part 5

Remedies for Violation

37-18-501. Penalty. A person practicing veterinary medicine or veterinary technology within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine or veterinary technology in this state and upon conviction shall be punished by a fine of not less than $200 or more than $500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212.

37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine or veterinary technology, unless otherwise exempted under 37-18-104(3). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215.

CHAPTER 19

MORTICIANS AND FUNERAL DIRECTORS

Part 1 — General

Section

37-19-101. Definitions.

Part 2 — Board of Morticians

37-19-201. Organization — compensation and expenses of members.

37-19-202. Meetings — quorum — rulemaking power.

Part 3 — Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee.
37-19-302. License required for practice of mortuary science — qualifications of applicants.
37-19-303. Mortician's license — application fee.
37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.
37-19-305. Reciprocity.
37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal.
37-19-307. Deposit of money received.
Sections 37-19-308 through 37-19-310 reserved.
37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license.
37-19-312. Suspension or revocation of license — right to notice and hearing.

Part 4 — Licensing of Mortuaries

37-19-401. License required — display of license.
37-19-402. Operator's license requirement.
37-19-403. Power of board to set standards — inspection.
37-19-404. Suspension, revocation of mortuary license.

Part 5 — Remedies for Violation

37-19-501. Penalty provision.

Part 1

General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of morticians provided for in 2-15-1619.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

(4) "Funeral directing" includes:

(a) supervising funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) the holding out to the public that one is a funeral director or undertaker.

(5) "Mortuary science" is the profession or practice of funeral directing and embalming.

(6) A "mortician" is a person licensed under this chapter to practice mortuary science.

(7) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: **En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701.**

Part 2

Board of Morticians

37-19-201. Organization — compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members may serve for a compensation of $25 per day for attending board meetings and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, connected with attending meetings or in the discharge of other board duties.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703.

37-19-202. Meetings — quorum — rulemaking power. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704.

Part 3

Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing on June 1, 1963, is entitled to an annual renewal of his license on payment of a renewal fee to the department on July 1 of each year. The amount of the annual renewal license fee shall be set by the board but may not exceed $25. A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707.

37-19-302. License required for practice of mortuary science — qualifications of applicants. The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the department is prohibited. To qualify for a mortician's license, a person must:

(1) be of good moral character;

(2) have graduated from an accredited college of mortuary science and have satisfactorily completed 2 academic years at an accredited college or university;

(3) pass an examination prescribed by the board;

(4) serve a 1-year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708.

37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board but not to exceed

$75, may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

History: **En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709.**

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination, upon payment of a license fee of $3, shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: **En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710.**

37-19-305. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if such state has a reciprocal agreement with Montana.

History: **En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712.**

37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be set by the board but may not exceed $50.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty of $25.

History: **En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711.**

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.**

37-19-308 through 37-19-310 reserved.

37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

(2) if the applicant or licensee has been convicted of a felony;

(3) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

(4) if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

(a) which does not properly protect the rights of the public;

(b) where there is any element of fraud; or

(c) where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714.

37-19-312. Suspension or revocation of license — right to notice and hearing. No action to suspend, revoke, or cancel a license may be taken by the board until the accused has been given notice and a hearing on the charges. If, at the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

Part 4

Licensing of Mortuaries

37-19-401. License required — display of license. An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part).

37-19-402. Operator's license requirement. The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4).

37-19-403. Power of board to set standards — inspection. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules are complied with. Such inspection or inspections shall be made at the discretion of the board and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board but not to exceed $25 per year.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part).

37-19-404. Suspension, revocation of mortuary license. A mortuary license may be suspended or revoked upon proof of:

(1) noncompliance of board rules relating to the operation of mortuaries;

(2) violation of any of the laws or rules of the state, district, or local board of health governing the disposition of dead human bodies; or

(3) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3).

Part 5

Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

CHAPTERS 20 THROUGH 29

RESERVED

CHAPTER 30

BARBERS

Part 1 — General

Section
37-30-101. Definitions — practice of barbering.

Part 2 — Board of Barbers

37-30-201. Organization — seal — records — deposit of money.
37-30-202. Compensation of members — expenses.
37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors — price agreements.

Part 3 — Licensing of Barbers

37-30-301. Certificate required.
37-30-302. Barber school curriculum approval — application for apprenticeship.
37-30-303. Apprenticeship required — application — examination.
37-30-304. Restrictions on apprentice practice.
37-30-305. Application for barber's certificate — examination.
37-30-306. Communicable disease — physician's certificate required.
37-30-307. Fees — handicapped persons exempted — other fees prohibited.
37-30-308. Display of certificate.

Part 4 — Licensing and Regulation of Barbershops and Schools

37-30-401. License required.
37-30-402. Application procedure — investigation and inspection — hearing — grant or refusal of license.
37-30-403. Facilities required for licensure — inspection.
37-30-404. Barber schools — operator — license fee — patrons.
Sections 37-30-405 through 37-30-410 reserved.
37-30-411. Only licensed barber eligible for barbershop license.
37-30-412. Barbershop owner's duty to monitor employees.
37-30-413. Display of price schedule.
Sections 37-30-414 through 37-30-420 reserved.
37-30-421. Display of license.
37-30-422. Maintenance of sanitary conditions.
37-30-423. Initial inspection fee — renewal.
37-30-424. Fee for advanced barber training program, clinic, or seminar.
37-30-425. Refusal, suspension, or revocation of license.

Part 5 — Remedies for Violation

37-30-501. Penalty.

Part 1

General

37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1625.

(c) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) An "apprentice", under this chapter, is a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in this state.

(3) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting the hair;

(c) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(d) singeing or shampooing the hair or applying hair tonic, or dyeing the hair of male persons;

(e) applying cosmetic preparations, antiseptics, powders, oils, lotions to scalp, face, or neck.

History: (1)En. 66-401.1 by Sec. 34, Ch. 350, L. 1974; Sec. 66-401.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; Sec. 66-403, R.C.M. 1947; (3)En. Sec. 2, Ch. 127, L. 1929; re-en. Sec. 3228.20, R.C.M. 1935; amd. Sec. 2, Ch. 183, L. 1937; Sec. 66-402, R.C.M. 1947; R.C.M. 1947, 66-401.1, 66-402, 66-403(2).

Part 2

Board of Barbers

37-30-201. Organization — seal — records — deposit of money. (1) The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records.

(2) The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 127, L. 1929; re-en. Sec. 3228.25, R.C.M. 1935; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974; R.C.M. 1947, 66-407.

37-30-202. Compensation of members — expenses. Each member of the board shall receive a compensation of $25 per day while attending board meetings plus travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in attending meetings of the board.

History: En. Sec. 8, Ch. 127, L. 1929; re-en. Sec. 3228.26, R.C.M. 1935; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975; R.C.M. 1947, 66-408.

37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors — price agreements. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall be recommended by the board. He shall receive $30 per day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

(4) The board may approve price agreements establishing minimum prices for barber work which are signed and submitted to the board by an organized group or groups of at least 75% of the barbers in a city or town if the board, after ascertaining by investigations and proofs as the situation permits and requires, finds that the price agreement is just and will best protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances to minimize the danger to the public health incident to this work. Under this chapter, a city or town includes the territory within its legal limits and the territory adjacent to it and lying within 3 miles of its legal limits. In determining whether a price agreement is just and will best protect the public health and safety, the board shall consider all conditions affecting the barber business in its relation to the public health and safety.

(5) In determining reasonable minimum prices, the board shall consider the necessary cost incurred in the city or town to maintain a barbershop in a clean, healthful, and sanitary condition.

(6) After making an investigation, the board shall by order fix the minimum price for work usually performed in a barbershop in the city or town in which the price agreement has been signed. The board may, on the petition of 50% of the barbers of the city or town, readjust the minimum prices, and the new prices must be approved by 75% of the barbers in the city or town.

(7) This section does not apply to students who have been enrolled less than 9 months in a barber college in this state or who are not apprentice barbers.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.27, R.C.M. 1935; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977; R.C.M. 1947, 66-409.

Part 3

Licensing of Barbers

37-30-301. Certificate required. A person may not practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice unless he first receives from the department a certificate of registration.

History: En. Sec. 12, Ch. 127, L. 1929; re-en. Sec. 3228.30, R.C.M 1935; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974; R.C.M. 1947, 66-412(1).

37-30-302. Barber school curriculum approval — application for apprenticeship. (1) A school or college of barbering may not be approved by the board unless it teaches the curriculum of the standardized schools approved by the national education council of barber examiners.

(2) Students of schools or colleges may, after attending the schools for a period of 9 months, make application to the department for an apprenticeship card to practice barbering under the immediate personal supervision of a licensed barber for the period of 1 year.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(6).

37-30-303. Apprenticeship required — application — examination. (1) A person is qualified to receive a certificate of registration to practice barbering only by serving as an apprentice barber and successfully passing an examination conducted by the department, subject to 37-1-101, to determine his fitness to practice barbering.

(2) An apprentice must file with the department an application setting forth the following information:

(a) full name and age of apprentice;

(b) name and place of approved barber school;

(c) dates of attendance at approved barber school;

(d) whether the applicant received a certificate of graduation from an approved barber school; and

(e) other information the board considers necessary.

(3) An apprentice applicant must successfully pass an apprentice examination conducted by the department, subject to 37-1-101, and pay to the department the required fee. The department shall then issue an apprentice barbering card which expires 2 years from the date of examination.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(1), (3), (4).

37-30-304. Restrictions on apprentice practice. A registered apprentice may not independently practice or engage in the practice of barbering; however, he may do the acts which constitute the practice of barbering when done under the immediate personal supervision of a registered barber.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(5).

37-30-305. Application for barber's certificate — examination. On completion of 1 year of apprenticeship under the immediate personal supervision of a licensed barber, an apprentice must apply to the department to take the examination for a barber's certificate of registration. An apprentice may take the examination for a barber's certificate of registration as many as three times before expiration of the apprentice card. If an apprentice fails to pass the examination for a barber's certificate of registration three times, he shall surrender the apprentice card to the department and may not be authorized to do the acts which constitute the practice of barbering.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(7).

37-30-306. Communicable disease — physician's certificate required. (1) A barber or barber apprentice may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public. A person practicing barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber apprentice, or student of barbering to practice the occupation of a barber or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber or barber apprentice, after securing his certificate, contracts a communicable, infectious, or contagious disease endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber apprentice is no longer afflicted with the communicable, infectious, or contagious disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part).

37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card is $25.

(2) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering is $20 and for the issuance of the certificate an additional $10.

(3) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee, set by the board in an amount not to exceed $15 and based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year, the barber shall on renewal of the certificate of registration pay a penalty of $10 in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(4) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a 9-month course

in a reputable barber college are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(5) No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(1), (2).

37-30-308. Display of certificate. A holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(1).

Part 4

Licensing and Regulation of Barbershops and Schools

37-30-401. License required. A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college or hold himself or itself out as engaging in or conducting a barbershop, school, or college unless first licensed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).

37-30-402. Application procedure — investigation and inspection — hearing — grant or refusal of license. An application for a barbershop, school, or college license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant and, on notice and after hearing, shall report its findings to the department, which shall grant a license if the board finds that the applicant is of good character and that the proposed barbershop, school, or college is equipped and will be conducted as required under this chapter. The application must be granted or refused within 30 days from the date of filing of the application or within 15 days after the hearing on the application if a hearing is held.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(9).

37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, school, or college in this state, the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot-water tanks shall have not less than a 2-gallon capacity with gravity pressure. Wastewater shall be disposed of through some system carrying it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part).

37-30-404. Barber schools — operator — license fee — patrons. (1) A barber school or college operating in this state must have in charge a person who has had 10 years' continuous experience as a barber.

(2) The owner of the school or college shall first secure a permit to operate granted by the board and issued by the department, on payment of an annual license fee of $50, and shall keep the permit prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $2,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) Barber schools or barber colleges may not charge patrons for barbering services and materials rendered.

(5) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(6) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).

37-30-405 through 37-30-410 reserved.

37-30-411. Only licensed barber eligible for barbershop license. A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter. This certificate or license is not transferable as to person or place.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(10).

37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of health and environmental sciences and the department of professional and occupational licensing and report to the department of professional and occupational licensing the name of a person practicing barbering therein who has a communicable disease.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part).

37-30-413. Display of price schedule. A barbershop shall display a schedule of prices in a conspicuous place.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(3).

37-30-414 through 37-30-420 reserved.

37-30-421. Display of license. A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(2).

37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers and the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part).

37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and which had been under the inspection of the board shall pay an annual license fee set by the board in an amount not to exceed $15 and based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee of $25 for the first year or portion thereof and shall pay an annual license fee set by the board in an amount not to exceed $15.

(2) Barbershop, school, or college licenses expire on July 1 of each year following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of $10, and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of $55.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part).

37-30-424. Fee for advanced barber training program, clinic, or seminar. Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay an annual license fee of $50 to the department or a 10-day license fee of $15 and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part).

37-30-425. Refusal, suspension, or revocation of license. The board may, after notice and opportunity for a hearing, either refuse to issue or renew or may suspend or revoke a barbershop or barber school or college license for any one or combination of the following causes:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-412; 37-30-413; and 37-30-421;

(2) conviction of a felony, shown by a certified copy of the record of the court of conviction;

(3) gross malpractice or gross incompetency;

(4) continued practice by a person knowingly having an infectious or contagious disease;

(5) advertising by means of knowingly false or deceptive statements;

(6) advertising, practicing, or attempting to practice under a trade name other than one's own;

(7) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(8) the commission of any of the offenses described in 37-30-203.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1.

Part 5

Remedies for Violation

37-30-501. Penalty. A person practicing the occupation of a barber without first having obtained a license under this chapter or a person knowingly employing a barber who has not obtained a license or a person who falsely pretends to be qualified to practice the occupation of a barber or a person who violates this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $25 or more than $200 or imprisoned in the county jail for not less than 10 days or more than 90 days, or both. In addition, the board may after hearing suspend or revoke a barber's certificate of registration or license to operate a barbershop, school, or college, or both, by reason of the person willfully violating this chapter or persistently failing to conform to the rules adopted by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.28, R.C.M. 1935; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974; R.C.M. 1947, 66-410.

CHAPTER 31

COSMETOLOGY

Part 1 — General

Section
37-31-101. Definitions.
37-31-102. Exemptions.

Part 2 — Board of Cosmetologists

37-31-201. Organization — seal.
37-31-202. Compensation of members — expenses.
37-31-203. Rulemaking powers.
37-31-204. Sanitary rules.

Part 3 — Licensing

37-31-301. Prohibited acts.
37-31-302. License required to practice, teach, or operate shop or school.
37-31-303. Application for license to practice or teach.
37-31-304. Qualifications of applicants for license to practice.
37-31-305. Qualifications of applicants for license to teach.
37-31-306. Reciprocity.
37-31-307. Temporary license pending examination.
37-31-308. Examination — reexamination — exemption for handicapped persons.
Sections 37-31-309 and 37-31-310 reserved.
37-31-311. School of cosmetology — certificate of registration — requirements — bond — curriculum.
37-31-312. Inspection.
Sections 37-31-313 through 37-31-320 reserved.
37-31-321. Issuance of licenses and certificates.
37-31-322. Renewal — continuing education — delinquency fee.
37-31-323. Fees.
37-31-324. Deposit of fees.
Sections 37-31-325 through 37-31-330 reserved.
37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.
37-31-332. Suspension for contracting communicable disease.
37-31-333. Appeal from actions of board.
37-31-334. Penalty — injunction.

Part 1

General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, or hands. The practice and teaching of cosmetology shall not be construed to include:

(a) itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as such store or place of business; or

(b) cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists provided for in 2-15-1626.

(4) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802.

37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818.

Part 2

Board of Cosmetologists

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd.

Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

37-31-202. Compensation of members — expenses. Each member of the board may receive as compensation for his services the sum of $25 per day for each day in actual attendance at any meeting of the board. In addition, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the performance of official duties.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part).

37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice or teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology for apprentices and students; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979.

37-31-204. Sanitary rules. The board, subject to the approval of the department of health and environmental sciences, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812.

Part 3

Licensing

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it shall be unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology;

(c) manage or operate a cosmetology shop or beauty parlor;

(d) teach in a school of cosmetology;

(e) practice manicuring;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment;

(d) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B).

37-31-302. License required to practice, teach, or operate shop or school. (1) No person may practice or teach cosmetology without a license.

(2) No place may be used or maintained for the teaching of cosmetology for compensation except under a certificate of registration.

(3) No person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license. No manager-operator license may be issued unless the applicant has been actively engaged in or teaching the practice of cosmetology in this state for a period of 1 year preceding the application in addition to possessing the other requirements for a practitioner or teacher of cosmetology.

(4) A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

(5) No license may be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801.

37-31-303. Application for license to practice or teach. The applicant must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board and given by the department, subject to 37-1-101. The license must be renewed annually under 37-31-322.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3).

37-31-304. Qualifications of applicants for license to practice. (1) Before one may practice or teach cosmetology or a person, firm, partnership, or corporation may operate a school of cosmetology, the person, firm, partnership, or corporation must obtain a license or certificate of registration from the department.

(2) To be eligible to take the examination to practice cosmetology, the applicant must be not less than 18 years of age, a graduate of the 8th grade, and of good moral character. The applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty school, which course of study has been distributed over a period of not less than 10

months or more than 14 months, and must have received a diploma from the beauty school or must have completed the course of study in cosmetology prescribed by the board of public education.

(3) The person qualified must file with the department a written application to take the examination, accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the department, and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1).

37-31-305. Qualifications of applicants for license to teach. Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(1) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(2) (a) have an operator's license to practice cosmetology issued by the department, been actively engaged as a beauty operator for 1 continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 500 hours of student teacher training; or

(b) have been actively engaged as a beauty operator for 3 continuous years immediately prior to taking the teachers' examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2).

37-31-306. Reciprocity. A person who is licensed to practice cosmetology in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as cosmetologists in that state.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1.

37-31-307. Temporary license pending examination. The board may authorize the department to grant to a graduate of a registered school of any state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice as an operator under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture for a period of not to exceed 90 days or until the next examination is held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from such a registered school. The temporary licenses are not renewable.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd.

Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 460, L. 1979, provided: "This act is effective on passage and approval." Approved April 5, 1979.

37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for operator's license shall be held at a place and time specified by the board at least two times a year and not more than five times a year and for teacher's license once each year. The examinations shall be conducted by the department, subject to 37-1-101. The examinations may not be confined to a specific method or system.

(2) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional teacher training at a registered school of cosmetology approved by the board.

(3) Physically handicapped persons trained for cosmetology by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808.

37-31-309 and 37-31-310 reserved.

37-31-311. School of cosmetology — certificate of registration — requirements — bond — curriculum. (1) No person, firm, partnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(2) No school for teaching cosmetology may be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It shall have in its employ a licensed teacher who is at all times in the immediate supervision of the work of the school, or other teachers the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than 2,000 hours and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used wholly or in part for a school of cosmetology.

(3) Licenses or certificates of registration may be refused, revoked, or suspended, as provided in 37-31-331.

(4) No teacher or student teacher may be permitted to practice cosmetology on the public in a school. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(5) The board may make further rules necessary for the proper conduct of schools of cosmetology.

(6) The board shall require the person, firm, partnership, or corporation operating a school to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(7) No professional beauty shop may be operated in connection with a school of cosmetology.

(8) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8).

37-31-312. Inspection. (1) The department shall appoint one or more inspectors who are licensed to practice under this chapter, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment must pay an initial inspection fee of $25.

(3) The board may authorize the department to grant to a cosmetological establishment, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

History: (1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1.

37-31-313 through 37-31-320 reserved.

37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for examination or for certificate of registration has complied with the requirements of this chapter and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this chapter.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807.

37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 hours' professional teacher training at a school approved by the board.

(b) A person holding a teacher's license but not actively engaged either full-time or part-time in teaching cosmetology during the preceding year may renew the license by paying the required fee. A person holding a teacher's license but not actively engaged in teaching cosmetology either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a teacher's license and not actively engaged either full-time or part-time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee of $10 shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline. The department shall notify license and certificate holders of the expiration date of licenses and certificates not less than 30 days before the expiration date and call attention to the penalty imposed for failure to renew a license or certificate by the date of expiration.

History: En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979.

37-31-323. Fees. (1) Fees for licenses and certificates of registration shall be paid to the department not to exceed the following respective amounts prescribed by the board:

(a) A student enrolling in a registered cosmetology school shall pay a registration fee of $7 to the department.

(b) An applicant for examination to practice shall pay a fee of $40 at the time of the application.

(c) An applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of $8 for a temporary license to practice as an operator.

(d) An applicant for examination to teach shall pay a fee of $60 at the time of the application.

(e) A person practicing cosmetology as an operator shall pay a fee of $12 for the issuance of a license.

(f) An applicant for a manager-operator license shall pay a fee of $20 for the issuance of a license.

(g) An applicant for an itinerant license as a cosmetologist shall pay a fee of $100.

(h) A person, firm, partnership, or corporation owning, operating, or conducting a cosmetological salon shall pay the sum of $20 for the issuance of the certificate of registration.

(i) A person teaching or instructing cosmetology shall pay a fee of $20 for the issuance of a license.

(j) A person, firm, partnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of $100 for a certificate of registration.

(k) A person, firm, partnership, or corporation owning, operating, or conducting an advanced school of cosmetology shall pay the sum of $100 for a certificate of registration.

(l) A person, firm, partnership, or corporation owning, operating, or conducting a teacher-training unit in a school of cosmetology shall pay the sum of $100 for a certificate of registration.

(m) An applicant for reciprocity licensure shall pay a fee of $100.

(n) Duplicate licenses or certificates of registration shall be issued on payment of $4 and proof of necessity.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815.

37-31-324. Deposit of fees. All fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part).

37-31-325 through 37-31-330 reserved.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetological establishment or school of cosmetology to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of cosmetological establishments or schools of cosmetology;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811.

37-31-332. Suspension for contracting communicable disease. If a licensee contracts a communicable disease endangering the public health, the board shall, on proof of it, cancel or suspend his license until the licensee can secure a physician's certificate showing that he is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in

equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).

CHAPTER 32

ELECTROLOGY

Part 1 — General

Section
37-32-101. Purpose.
37-32-102. Definitions.
37-32-103. Exemptions.

Part 2 — Board of Cosmetologists

37-32-201. Rulemaking power.

Part 3 — Licensing

37-32-301. License required.
37-32-302. Qualifications — examination — issuance of license.
37-32-303. Reciprocity.
37-32-304. Electrology salon license required.
37-32-305. Fees — renewal — deposit of moneys collected.
Sections 37-32-306 through 37-32-310 reserved.
37-32-311. Penalty.

Part 1

General

37-32-101. Purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975; R.C.M. 1947, 66-3601.

37-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of professional and occupational licensing.

(4) "Electrology" means the study and professional practice of removing superfluous hair by destroying the hair roots by passage of an electric current, by any method. Electrology as defined in this chapter shall include electrolysis and/or thermolysis.

History: En. 66-3602 by Sec. 2, Ch. 143, L. 1975; R.C.M. 1947, 66-3602; amd. Sec. 1, Ch. 482, L. 1979.

37-32-103. Exemptions. Nothing in this chapter prevents:

(1) a licensed medical doctor from performing the work of an electrologist;

(2) a person employed by a federal, state, county, city, or other political subdivision or by an educational or charitable institution from performing the work of an electrologist.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(2).

Part 2

Board of Cosmetologists

37-32-201. Rulemaking power. The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(1).

Part 3

Licensing

37-32-301. License required. No person may represent himself to be an electrologist or engage in the practice of electrology unless he is licensed under this chapter.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(1).

37-32-302. Qualifications — examination — issuance of license. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least 18 years of age;

(b) furnish satisfactory evidence of education, instruction, training, and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this chapter have been met.

History: En. 66-3604 by Sec. 4, Ch. 143, L. 1975; R.C.M. 1947, 66-3604.

37-32-303. Reciprocity. Reciprocal electrology licenses may be granted by the board where the individual has a valid license from another state and has fulfilled requirements of this profession similar to those provided in this chapter.

History: En. 66-3606 by Sec. 6, Ch. 143, L. 1975; R.C.M. 1947, 66-3606.

37-32-304. Electrology salon license required. The premises in which an electrologist or electrologists may practice shall be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

History: En. 66-3605 by Sec. 5, Ch. 143, L. 1975; R.C.M. 1947, 66-3605.

37-32-305. Fees — renewal — deposit of moneys collected. (1) The fee for an original electrologist license shall not exceed $50 as set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this chapter expire on December 31 and shall be renewed annually. Failure to renew on or before December 31 shall cause a late renewal fee of $10 to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or moneys collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board in administration of the chapter.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977; R.C.M. 1947, 66-3608.

37-32-306 through 37-32-310 reserved.

37-32-311. Penalty. Violation of this chapter or of the rules adopted under it is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(2).

CHAPTER 33

MASSAGE THERAPY

Part 1 — General

Section
37-33-101. Purpose.
37-33-102. Definitions.
37-33-103. Exemptions.
37-33-104. Restriction on authority of licensee.

Part 2 — Board of Massage Therapists

37-33-201. Organization — meetings — quorum.
37-33-202. Compensation of members — expenses.
37-33-203. Bond of treasurer — dismissal of member for cause.
37-33-204. Powers and duties — records — seal.

Part 3 — Licensing

37-33-301. License required.
37-33-302. Application — qualifications — fee.
37-33-303. Temporary permit pending next meeting.
37-33-304. Examination.
37-33-305. Admission of licensees from other states.
37-33-306. Renewal.
37-33-307. Deposit of fees.
Sections 37-33-308 through 37-33-310 reserved.

37-33-311. Denial, suspension, or revocation of license.
37-33-312. Penalty.

Part 1

General

37-33-101. Purpose. It is hereby declared as a matter of legislative policy in the state of Montana that the occupation of massage therapist should be regulated and licensed for the protection of the interest, health, and welfare of the people of Montana; that it is necessary to authorize and provide authority to a state board to properly protect the patron public against improper, unauthorized, and unqualified massage therapists and to provide standards of sanitation and practice.

History: En. Sec. 1, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2901.

37-33-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of massage therapists provided for in 2-15-1627.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 2, chapter 15, part 16.

(3) "Massage therapist" includes persons engaged in the occupation of massage therapy and includes the feminine "masseuse".

(4) "Massage therapy" means the trained ability of body massage therapy by hands for the purpose of body massage therapy; the use of oil rubs, salt glows, hot and cold packs, tub, shower, or cabinet baths; and the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.

(5) "Massage therapy establishment" means a place in which any of the above procedures and methods are administered or used.

(6) "Practice of massage therapy" means to perform massage therapy as above defined for remuneration or hire or to advertise by the use of the word "massage" in any of its derivations or genders or by any other means the practice of massage therapy.

History: En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2902.

37-33-103. Exemptions. The following classes of persons are exempt from this chapter:

(1) persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic, or podiatry;

(2) persons who are registered or licensed under the laws of this state as nurses, practical nurses, physical therapists, barbers, or cosmetologists;

(3) educational institutions maintaining a full-time faculty with a varied curriculum.

History: En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974; R.C.M. 1947, 66-2914; amd. Sec. 1, Ch. 32, L. 1979.

37-33-104. Restriction on authority of licensee. It is a violation of this chapter for a person engaged in the occupation of a massage therapist to advertise or assert as a licensee under this chapter that he diagnoses or treats a disease, injury, or illness.

History: En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

Part 2

Board of Massage Therapists

37-33-201. Organization — meetings — quorum. (1) The board shall annually elect a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold one regular meeting each year at the city of Helena, Montana, and shall hold special meetings at times and places a majority of the board designates. However, not more than four meetings may be held in any one year.

(3) A majority of the board constitutes a quorum.

History: En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(1), (2).

37-33-202. Compensation of members — expenses. (1) The members of the board shall receive a compensation of $25 for each day during which they are actually engaged in the discharge of their duties and shall be allowed travel expenses as provided for in 2-18-501 through 2-18-503.

(2) Compensation, mileage, and other expenses necessarily connected with the board shall be paid only out of the earmarked revenue fund.

History: En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(3), (4).

37-33-203. Bond of treasurer — dismissal of member for cause. (1) The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper.

(2) Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed and the governor shall appoint as his successor some licensed massage therapist of this state.

History: En. Sec. 11, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2911.

37-33-204. Powers and duties — records — seal. (1) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the power of the board.

(2) It shall adopt a seal, which shall be affixed to licenses issued.

(3) It may adopt rules it considers proper and necessary for the performance of its duties.

(4) It shall adopt a schedule of minimum educational requirements, not inconsistent with this law, which shall be without prejudice, partiality, or discrimination as to the different approved schools of massage therapy training.

(5) The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

History: En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(3).

Part 3

Licensing

37-33-301. License required. It is unlawful for a person to practice the occupation of massage therapy in any of its arts and sciences in this state without first obtaining a license under this chapter.

History: En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(1).

37-33-302. Application — qualifications — fee. (1) A person wishing to engage in the occupation of a massage therapist in this state shall make application to the department on the form and in the manner prescribed by the board at least 15 days prior to a meeting of the board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage therapy certifying not less than 1,000 hours of study satisfactory to the school. Application shall be in writing and sworn to by some officer authorized to administer oaths and shall recite the history of the applicant's educational qualifications, how long he has studied massage therapy, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage therapy, accompanying this with proof by a diploma or certificate and with satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee of $35 which shall accompany the application. An applicant failing to pass the requirements is entitled, within 6 months, to a reexamination on payment of an additional fee of $10, but on a third failure may not reapply for a period of 1 year.

History: En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2906.

37-33-303. Temporary permit pending next meeting. When application for examination for license is filed with the department, the board may authorize the department to issue to the applicant a temporary permit to engage in the occupation of massage therapy, which is good until the next meeting of the board.

History: En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(2).

37-33-304. Examination. (1) Examinations for licenses to engage in the occupation of massage therapy shall be made by the department, subject to 37-1-101 and according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications.

(2) Examinations shall be in writing, and in addition each applicant shall pass a reasonable demonstrative and oral examination. Minimum requirements are a general average in the examination of 75% in all subjects and not less than 50% in any one subject. In addition to the subjects as may be designated by the board, the examination shall include principles of sanitation and hygiene.

History: En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2907.

37-33-305. Admission of licensees from other states. Upon payment of the fee of $35 as herein provided, persons licensed to engage in the occupation of massage therapist under the laws of any other state having equal requirements to this chapter may, in the discretion of the board, be issued a license to engage in the occupation of massage therapist in this state without examination.

History: En. Sec. 12, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2912.

37-33-306. Renewal. (1) A license expires on December 31 of each year and shall be renewed then or thereafter, by the department, on payment of a renewal fee of not less than $10 or more than $50, as set by the board.

(2) Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal fee in an amount not to exceed $10. Failure to renew within 30 days following December 31 shall be cause for suspension or revocation of the license.

History: En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977; R.C.M. 1947, 66-2909; amd. Sec. 2, Ch. 32, L. 1979.

37-33-307. Deposit of fees. (1) Examination and renewal fees received by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued.

History: En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(1), (2).

37-33-308 through 37-33-310 reserved.

37-33-311. Denial, suspension, or revocation of license. (1) The board may, after hearing, deny, suspend, revoke, or refuse to renew a license under this chapter to a person, otherwise qualified:

(a) who obtained the license by fraudulent representation;

(b) for incompetency in practice;

(c) for use of untruthful or improbable statements to patrons or in his advertisements;

(d) for habitual intoxication;

(e) for failure to renew; or

(f) for unprofessional and immoral conduct.

(2) The board may authorize the department to reissue a license after a lapse of not less than 6 months if in the board's judgment the act or conditions of disqualification have been remedied.

History: En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-312. Penalty. Any person who shall engage in the practice of body massage therapy as a massage therapist or shall accept compensation for performing body massage therapy as a massage therapist without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $200 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: **En. Sec. 13, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2913.**

CHAPTERS 34 THROUGH 39

RESERVED

CHAPTER 40

SANITARIANS

Part 1 — General

Section
37-40-101. Definitions.
37-40-102. Exemptions.

Part 2 — Board of Sanitarians

37-40-201. Chairman — meetings.
37-40-202. Compensation — expenses.
37-40-203. Rulemaking power.

Part 3 — Licensing

37-40-301. License required.
37-40-302. Application — examination — certificate.
37-40-303. Licensing sanitarians from other states.
37-40-304. Fees — renewal.
37-40-305. Deposit of fees.
37-40-306. Prior registration as sanitarian still valid.
37-40-307. Sanitarian practicing prior to effective date.
Sections 37-40-308 through 37-40-310 reserved.
37-40-311. Suspension or revocation of license.
37-40-312. Penalty.

Part 1

General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1631.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Registered sanitarian" means a sanitarian licensed under this chapter.

(4) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the physical, biological, and chemical sciences and the principles and methods of public

health acquired by professional education and practical experience through inspectional, educational, and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means planning, inspectional, educational, or enforcement duties in the field of environmental sanitation.

History: **En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5).**

37-40-102. Exemptions. Persons exempt from the requirements of this chapter, unless practicing the profession of sanitarian, are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

(2) any person who is a sanitary engineer, public health engineer, registered professional engineer, or engineer-in-training;

(3) any public health officer employed pursuant to 50-2-116; and

(4) any person employed by a federal governmental agency, but only at such times as the person is carrying out the functions of his employment.

History: **En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6).**

Part 2

Board of Sanitarians

37-40-201. Chairman — meetings. The board shall appoint one of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four times a year.

History: **En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2).**

37-40-202. Compensation — expenses. Members of the board shall receive compensation of $25 a day plus travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, while engaged in business of the board.

History: **En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1).**

37-40-203. Rulemaking power. (1) The board may adopt rules consistent with this chapter for its administration.

(2) The board's rulemaking and hearing functions shall be in accordance with the Montana Administrative Procedure Act.

History: **En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3).**

Part 3

Licensing

37-40-301. License required. A person may not practice the profession of a sanitarian or hold himself out to be a sanitarian unless he is licensed under this chapter.

History: **En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411.**

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must meet minimum standards set by the board and must pass an examination given at a time and place set by the board, but not to exceed 1 year past the date of issuance of the probationary certificate described in subsection (3) below.

(3) Upon application for registration and payment of the registration fee, a probationary certificate shall be issued.

(4) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(5) Holders of current certificates shall be entitled to append to their name the initials "R.S.".

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415.

37-40-303. Licensing sanitarians from other states. The department shall issue a license without examination to a person who applies to the department, pays a fee of $35, and submits satisfactory proof to the board that:

(1) he is of good moral character; and

(2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419.

37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board, not to exceed $10.

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416.

37-40-305. Deposit of fees. All fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417.

37-40-306. Prior registration as sanitarian still valid. All persons previously registered under Chapter 174, Laws of 1959, are registered sanitarians for purposes of this chapter.

History: En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.

37-40-307. Sanitarian practicing prior to effective date. A person having practiced as a sanitarian, as defined by 37-40-101(5), for 1 year prior to July 1, 1974, may be registered as a sanitarian upon making application and paying the required fee.

History: En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979.

37-40-308 through 37-40-310 reserved.

37-40-311. Suspension or revocation of license. The board may suspend or revoke a license for the following reasons:

(1) unprofessional conduct;

(2) fraud and deceit in obtaining a license;

(3) gross negligence, incompetency, or misconduct in the practice as a sanitarian; or

(4) the conviction of a crime involving moral turpitude.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2).

37-40-312. Penalty. A person who offers his services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that he is a sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment for not longer than 6 months, or both.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420.

CHAPTER 41

CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS

Part 1 — General

Section

37-41-101. License required.
37-41-102. Exemptions.
37-41-103. Rulemaking power of department.

Part 2 — Licensing

37-41-201. Application for license — form and contents.
37-41-202. Licenses — nontransferability — fees.
37-41-203. Vehicle of licensee — marking required.
37-41-204. Validation of license by local health officer.
Sections 37-41-205 through 37-41-210 reserved.
37-41-211. Denial, suspension, or revocation of license.
37-41-212. Enforcement responsibility — penalty — deposit of fines.

Part 1

General

37-41-101. License required. No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks, or privies and disposal of waste therefrom unless licensed by the department of health and environmental sciences and the license is validated by the health officer or local sanitarian in each county where business is to be conducted.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part).

37-41-102. Exemptions. The license provisions of this chapter do not apply to any county or municipality or other local, state, or federal governmental agency which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities or other local, state, or federal governmental agencies shall comply with rules adopted by the department for cleaning cesspools, septic tanks, or privies and disposal of wastes from cesspools, septic tanks, or privies.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5407; amd. Sec. 18, Ch. 22, L. 1979.

37-41-103. Rulemaking power of department. The department shall adopt necessary rules for carrying out the provisions of this chapter.

History: En. Sec. 198, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5406.

Part 2

Licensing

37-41-201. Application for license — form and contents. Application for a license is made to the department on application forms procured from the local health officer or sanitarian in the county of applicant's residence. The application shall show:

(1) the name in full and, if a partnership, the name of each partner;

(2) place of business and the counties in which business is to be conducted;

(3) place of residence of the applicant or applicants;

(4) number of units and type of equipment to be used;

(5) a statement that the applicant will comply with rules adopted by the department under this chapter;

(6) the signature of the individual, authorized officer of the firm or corporation, or managing partner of the partnership applying.

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5402.

37-41-202. Licenses — nontransferability — fees. (1) Licenses issued by the department shall be titled "Montana Sanitary Licensee" and numbered consecutively beginning with the number 10. Licenses expire on December 31 of each calendar year. Licenses are not transferable.

(2) The fee for each license is $25, payable at the time of application for license. Twenty dollars of the fee shall be deposited with the county treasurer in the county of licensee residence and $5 forwarded with the application to the department. The state fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of a sanitarian to enforce this chapter. The department shall return the license to county of licensee residence for issue.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5403.

37-41-203. Vehicle of licensee — marking required. Persons licensed shall paint on the side of each vehicle using the words "Montana Sanitary Licensee" and immediately under those words shall paint "License

No. .... (insert number of license)". License numbers shall be at least 1 ½ inches high and in a distinct color contrasting with the background.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971; R.C.M. 1947, 69-5404.

37-41-204. Validation of license by local health officer. Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a validation signature on the license from the local health officer or sanitarian having jurisdiction in each county in which the business will be conducted. The license shall be invalid until said validation signature is affixed. The validation signature shall be affixed only after satisfactory evidence of the applicant's:

(1) knowledge of sanitary principles, laws, and ordinances;

(2) reliability in observing sanitary laws;

(3) ability to clean the septic tank, cesspool, or privy without endangering human health or safety; and

(4) having a permanent approved disposal site or having knowledge of the restrictions on disposal site locations.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971; R.C.M. 1947, 69-5405.

37-41-205 through 37-41-210 reserved.

37-41-211. Denial, suspension, or revocation of license. The department of health and environmental sciences may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part).

37-41-212. Enforcement responsibility — penalty — deposit of fines. State and local health officers or sanitarians are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer or sanitarian made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than $100, imprisoned for not more than 30 days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971; R.C.M. 1947, 69-5408.

CHAPTER 42

WATER TREATMENT PLANT OPERATORS

Part 1 — General

Section

37-42-101. Purpose.
37-42-102. Definitions.
37-42-103. Exemption.
37-42-104. Classification of treatment plants and distribution systems.

Part 2 — Board of Water and Wastewater Operators

37-42-201. Meetings — examinations — compensation of members — expenses.

37-42-202. Rulemaking power.
37-42-203. Duty to advise and assist department.

Part 3 — Licensing

37-42-301. Department to certify operators.
37-42-302. Unlawful to operate plant or system without certified operator.
37-42-303. Operator of treatment plant or distribution system to be certified — exemption.
37-42-304. Application for operator's certificate — fee.
37-42-305. Certification without examination.
37-42-306. Issuance of operator certificate — display.
37-42-307. Retention of certificate by operators who terminate employment.
37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.
37-42-309. Deposit of fees.
Sections 37-42-310 through 37-42-320 reserved.
37-42-321. Revocation of operator's certificate — rehearing by board.
37-42-322. Violation.

Part 1

General

37-42-101. Purpose. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: **En. Sec. 1, Ch. 239, L. 1967; R.C.M. 1947, 69-5901.**

37-42-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of water and wastewater operators provided for in 2-15-2105.

(2) "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state) wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters

and which serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and which serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part).

37-42-103. Exemption. Operators of plants or systems serving less than 10 families are exempt from this chapter.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part).

37-42-104. Classification of treatment plants and distribution systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of wastewaters to be treated and other physical conditions affecting such waste treatment plants, and according to the skill, knowledge, and experience that the operator in responsible charge must have to successfully supervise the operation of such water treatment plants and water distribution systems and such wastewater treatment facilities so as to protect the public health and prevent unlawful pollution.

History: En. Sec. 4, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5904.

Part 2

Board of Water and Wastewater Operators

37-42-201. Meetings — examinations — compensation of members — expenses. (1) Annually, when new members are appointed to the board, a chairman shall be elected at the next board meeting.

(2) The board shall hold at least one examination each year for the purpose of examining candidates for certification, at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification.

(3) Additional meetings may be called by the chairman or on written request of four members of the board when necessary to carry out this chapter. Four members constitute a quorum.

(4) The members of the board shall receive a fee of $20 per day while in session, plus travel expenses as provided for in 2-18-501 through 2-18-503, including travel while discharging their official duties.

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(2), (3).

37-42-202. Rulemaking power. The board shall adopt rules necessary to carry out this chapter. Before the rules are effective, they shall be approved by the department. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

History: En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974; R.C.M. 1947, 69-5910.

37-42-203. Duty to advise and assist department. The board shall advise and assist the department in the administration of the certification program. The board shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators.

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(1).

Part 3

Licensing

37-42-301. Department to certify operators. (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems after considering the recommendations of the board.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: (1)En. Sec. 5, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; Sec. 69-5905, R.C.M. 1947; (2)En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; Sec. 69-5908, R.C.M. 1947; R.C.M. 1947, 69-5905, 69-5908(part).

37-42-302. Unlawful to operate plant or system without certified operator. (1) It is unlawful for a person, firm, or corporation both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate it unless the competency of the operator is certified to by the department under this chapter.

(2) Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

History: En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974; R.C.M. 1947, 69-5911.

37-42-303. Operator of treatment plant or distribution system to be certified — exemption. (1) Water and wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or wastewater supply system to be supervised.

(2) However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the

person or persons certified by the governing board or owner to have been in responsible charge of the water and wastewater plants and water distribution systems on July 1, 1967. A certificate so issued will be valid only in that plant.

History: **En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).**

37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost set forth in 37-42-308 for the filing of each application and shall not act on an application until the fee has been paid.

History: **En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part).**

37-42-305. Certification without examination. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the board of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under 37-42-201(2) and 37-42-301.

History: **En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).**

37-42-306. Issuance of operator certificate — display. (1) The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise.

(2) The certificate shall be prominently displayed in the office of the operator.

(3) Certificates continue in effect unless revoked by the department but remain the property of the department, and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

History: **En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(part).**

37-42-307. Retention of certificate by operators who terminate employment. Operators who terminate employment may retain their certificate for 2 years, providing that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board.

History: **En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(3).**

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter shall be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the following schedule:

(a) class I, $20;
(b) class II, $15;
(c) class III, $10;
(d) class IV, $5;
(e) class V, $3.

(2) If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the board. If the certificate remains suspended for a period of more than 30 days, it shall be revoked by the board. However, the board, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the board on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension shall be given to certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through his own fault desires to continue as a water or wastewater plant operator, he must make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the board.

History: En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974; R.C.M. 1947, 69-5909.

37-42-309. Deposit of fees. Filing and certification fees shall be deposited with the state treasurer in the board of water and wastewater operators account in the department earmarked revenue fund and shall be used to pay the expenses of the board and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part).

37-42-310 through 37-42-320 reserved.

37-42-321. Revocation of operator's certificate — rehearing by board. (1) The department may revoke the certificate of an operator, following a hearing by the department, when it is found that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or

(c) the operator is incompetent or unable to properly perform his duties.

(2) A person who has his certificate revoked by the department may appeal to the board for a rehearing within 10 days of notification by the department, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(2).

37-42-322. Violation. Any person, firm, or corporation, both municipal and private, violating any provisions of this chapter or the rules adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules adopted hereunder shall constitute a separate offense.

History: En. Sec. 12, Ch. 239, L. 1967; R.C.M. 1947, 69-5912.

CHAPTER 43

WATER WELL CONTRACTORS

Part 1 — General

Section
37-43-101. Purpose.
37-43-102. Definitions.
37-43-103. Exemptions.

Part 2 — Board of Water Well Contractors

37-43-201. Seal — employees — compensation of members.
37-43-202. Powers and duties.

Part 3 — Licensing

37-43-301. Licensed contractor to supervise all construction.
37-43-302. License required.
37-43-303. Application — fee.
37-43-304. Temporary license pending examination.
37-43-305. Examination and qualifications.
37-43-306. Bond to be required.
37-43-307. Annual renewal — fee — revocation for nonrenewal.
Sections 37-43-308 through 37-43-310 reserved.
37-43-311. Suspension and revocation of license — grounds — procedure.
37-43-312. Penalty.

Part 4 — Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee.
37-43-402. Completion of contracts by successor in interest of licensed contractor.

Part 1

General

37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste of groundwater resources within this state by reasonable regulation and licensing of drillers or makers of water wells in this state and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is in the best interest of the public, and the waste of groundwater resources through inefficient or incompetent operations of drillers or makers of water wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells in this state is obtained.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974; R.C.M. 1947, 66-2602.

37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of water well contractors provided for in 2-15-1632.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a natural person who constructs a water well on lands other than his own for compensation.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part).

37-43-103. Exemptions. This chapter does not apply to:

(1) an individual who drills a water well on land which is owned or leased by him and is used by him for farming, ranching, or agricultural purposes or as his place of abode and who obtains a permit from the board, which permit the board shall issue upon finding that the drilling is exempted under this paragraph; or

(2) an individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; R.C.M. 1947, 66-2602.2.

Part 2

Board of Water Well Contractors

37-43-201. Seal — employees — compensation of members. (1) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(2) The board may in its discretion employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis.

(3) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of $20 per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The state engineer, the director of environmental sanitation of the state board of health, and other employees of the state of Montana shall receive no extra compensation for their services as members of the board.

History: Ap. p. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; Ap. p. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975; Sec. 66-2604, R.C.M. 1947; R.C.M. 1947, 66-2604, 82A-1602.26(4), (5).

37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board may request the department to inspect water wells drilled or being drilled, and the department has access to these at reasonable times.

(4) The board may, subject to 37-1-101 and 37-1-102, establish a program for training water well drillers or prospective water well drillers and apprentices to more effectively carry out this chapter.

(5) The rules of the board shall be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(6) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) revoke or suspend licenses for good cause, after notice and opportunity to be heard;

(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and

(e) generally perform duties which will carry out this chapter.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974; R.C.M. 1947, 66-2605.

Part 3

Licensing

37-43-301. Licensed contractor to supervise all construction. Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed contractor is placed in charge of all water well construction.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part).

37-43-302. License required. The drilling, making, or construction of water wells into the groundwater resources of this state is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. It is unlawful for any contractor, as defined in this chapter, to construct a water well without first having obtained a valid license therefor as provided for in this chapter.

History: En. Sec. 3, Ch. 176, L. 1961; R.C.M. 1947, 66-2603; amd. Sec. 19, Ch. 22, L. 1979.

37-43-303. Application — fee. (1) A person desiring to engage in the drilling, making, or construction of one or more wells for underground water in this state shall first file an application with the department for a contractor's license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee of $100 for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(3) A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(1).

37-43-304. Temporary license pending examination. A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (a) through (f) in 37-43-305(1) and who has applied for a license under this chapter. The temporary license entitles the holder to engage in the business of drilling, making, or constructing water wells until the time of the next examination given under 37-43-305. On the applicant's successfully meeting the board's requirements on examination, the temporary license shall be returned to the department and a regular license issued. If the holder of a temporary license fails, after notice of the holding of an examination, to submit himself for examination or to meet the board's requirements, the temporary license expires and shall be returned to the department for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(2).

37-43-305. Examination and qualifications. (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells which the board adopts, the department shall, subject to 37-1-101(4), inquire by examination or otherwise into the qualifications of applicants for licenses to drill or make wells for the production of underground waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of underground geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) the applicant must have completed a minimum of 1 year apprenticeship under the direct supervision of a licensed water well contractor.

(2) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 6 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974; R.C.M. 1947, 66-2608.

37-43-306. Bond to be required. The department, on issuance of a license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or in lieu thereof its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the penal sum of $1,000, conditioned that the licensee will comply with the rules of the board and reasonable requirements made by the board in connection with the drilling of an individual well.

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975; R.C.M. 1947, 66-2609.

37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee of $25.

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling in this state or contracting therefor, he must apply under 37-43-303 and 37-43-304. Notice of suspension shall be given a licensee when the suspension occurs.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974; R.C.M. 1947, 66-2607.

37-43-308 through 37-43-310 reserved.

37-43-311. Suspension and revocation of license — grounds — procedure. (1) A license issued under this chapter may be suspended or revoked by the board in cases other than failure of a licensee to renew the license after notice and hearing:

(a) in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license;

(b) for the practice of fraud or deceit in obtaining a license;

(c) for gross negligence;

(d) for incompetence;

(e) for conviction of a felony; or

(f) for violating the requirements of this chapter.

(2) Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board on its own motion or on receipt of a complaint shall hold a hearing on charges.

(3) A person bringing the complaint has the burden of proof and must appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of 1 year.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974; R.C.M. 1947, 66-2610.

37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling or making water wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county.

History: En. Sec. 13, Ch. 176, L. 1961; R.C.M. 1947, 66-2613.

Part 4

Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee. No action or counterclaim shall be maintained by any contractor in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any such agreement or for any such work, labor, or materials for which a license is required by this chapter without alleging and proving that such contractor had a valid license at the time of making such agreement and of supplying such labor, work, or materials.

History: En. Sec. 12, Ch. 176, L. 1961; R.C.M. 1947, 66-2612.

37-43-402. Completion of contracts by successor in interest of licensed contractor. Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's rights under a contract or agreement for the drilling or making of a water well or wells, the successor in interest to such rights shall be permitted to engage in the business of drilling, making, or construction of water wells to the extent necessary to perform the obligations of said licensed water well contractor under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor.

History: **En. Sec. 1, Ch. 234, L. 1963; R.C.M. 1947, 66-2615.**

CHAPTERS 44 THROUGH 49

RESERVED

CHAPTER 50

PUBLIC ACCOUNTANTS

Part 1 — General

Section

37-50-101. Definitions.
37-50-102. Exemptions.

Part 2 — Board of Public Accountants

37-50-201. Organization — general rulemaking power — quorum — seal — records.
37-50-202. Compensation of members — expenses.
37-50-203. Rules of the board — solicitation of advisory comments.
37-50-204. Rulemaking powers relating to reexaminations.
37-50-205. Duties of the department.

Part 3 — Licensing

37-50-301. Illegal use of title.
37-50-302. Certified public accountants — certification — qualifications and requirements.
37-50-303. Public accountants — licensure — qualifications and requirements.
37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required.
37-50-305. Education requirements.
37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.
37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.
37-50-308. Examination.
37-50-309. Credit for examinations taken in other states.
37-50-310. Existing certificates sufficient.
37-50-311. Certified public accountants — waiver of examination for holders of out-of-state license.
37-50-312. Public accountants — waiver of examination for holders of out-of-state license.
37-50-313. Registration of foreign accountants — restriction on title used.
37-50-314. Annual certification or licensure.
37-50-315. Deposit of moneys collected.
37-50-316. Other license fees prohibited.
Sections 37-50-317 through 37-50-320 reserved.
37-50-321. Revocation, suspension, or refusal to renew certificate or license.
37-50-322. Reinstatement of certificate or license to practice.
Sections 37-50-323 through 37-50-330 reserved.
37-50-331. Partnership composed of certified public accountants — registration.
37-50-332. Corporation composed of certified public accountants — registration.
37-50-333. Partnership composed of public accountants — registration.
37-50-334. Corporation composed of public accountants — registration.

37-50-335. Registration of offices.
37-50-336. Revocation or suspension of partnership or corporation registration.
Sections 37-50-337 through 37-50-340 reserved.
37-50-341. Initiation of proceedings — hearings and rulemaking.
37-50-342. Violation.

Part 4 — Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty.
37-50-402. Privileged communications.

Part 1

General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1641.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1.

37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a license to practice under 37-50-314 or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313 provided that such employee or assistant shall not issue any accounting or financial statement over his name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979.

Part 2

Board of Public Accountants

37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman, secretary, and treasurer from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) A quorum for the transaction of business consists of three members of the board.

(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979.

37-50-202. Compensation of members — expenses. Each member of the board while actually engaged in the duties of his office is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one-fourth the daily rate of a grade 8, step 1, classified state employee, for every 6 hours or fraction thereof spent away from home on board business.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979.

37-50-203. Rules of the board — solicitation of advisory comments. (1) The board may adopt such rules consistent with the purposes of this chapter as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board, in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states;

(e) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any such corporation failing to comply with such standards; and

(f) rules setting forth the terms, not exceeding 2 years, and areas of experience required for certification as a certified public accountant and licensing as a licensed public accountant.

(3) At least 60 days prior to the adoption of a rule or amendment, the department shall mail copies of the proposed rule or amendment to each holder of a certificate or license issued under 37-50-314, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least 15 days prior to the effective

date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof.

History: En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979.

Compiler's Comments

Existing orders and rules effective until revoked or modified. Sec. 22, Ch. 684, L. 1979, provided: "All orders and rules relating to the practice of accounting made by the board of public accountants prior to July 1, 1979, remain in effect until revoked or modified in accordance with law."

Statement of intent. The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "1. The Board may establish rules setting standards for determining a practitioner's competency in specialized fields of accounting. It is contemplated the rules should address the following:

(a) the fields of specialized practice such as auditing of financial institutions, auditing of governmental entities, estate tax planning and other fields requiring specialized knowledge;

(b) types of programs required for determining competency such as classroom instruction, seminars, homestudy, experience, examination or any combination thereof;

(c) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or educational groups;

(d) the number of hours of instruction or experience, if any, required;

(e) contents of examinations, if any, required;

(f) alternative methods of fulfilling the requirements such as intrafirm or company programs and a provision for waiver of the requirements for hardship.

The rules may not prohibit the person holding a license or certificate from practicing in any area or field of public accounting nor affect his ability to acquire annual renewal of his certificate or license.

2. The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

(a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;

(b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:

(i) the minimum number of accounting credits required;

(ii) subjects of courses allowed as supplementary business-related courses; and

(iii) the total number of credits required in business administration.

3. The Board may adopt rules prescribing continuing education for continued practice in public accounting. It is contemplated that they should address the following:

(a) types of programs required for determining knowledge and competence such as classroom instruction, seminars, homestudy, experience, examination, or any combination thereof;

(b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or national groups;

(c) the number of hours of instruction or experience, if any, required;

(d) contents of examinations, if any, required;

(e) alternative methods of fulfilling the requirements such as intrafirm or intracompany programs or prospective programs of study;

(f) methods of monitoring and enforcement;

(g) the rules may not deny a person the ability to acquire annual renewal of his certificate or license if continuing education requirements constitute a hardship due to inaccessibility to programs or interference with an interstate practice;

(h) the rules should reflect standards for continuing education programs to ensure equal access, reasonable cost, exceptions for financial or physical hardships or impediments and reference to areas commonly and not rarely practiced by those engaged in public accounting.

4. The Board may establish rules governing partnerships and corporations practicing public accountancy. It is contemplated that the rules should address the following:

(a) the financial ability of a partnership or corporation to protect the public from damages caused by negligence or malpractice, if any;

(b) the method of establishing financial ability such as unimpaired capital, professional liability insurance, self-insurance or mutual insurance, or agreement;

(c) other areas of regulation regarding firm style, name, title, affiliations, and joint and several liability of members or shareholders are governed by existing statutory law regulating partnerships and professional corporations.

5. The Board may establish rules setting forth terms, not exceeding two years, and areas of experience for original certification or licensure. It is contemplated that the rules should address the following:

(a) the duration of experience required, not to exceed two years;

(b) the areas of experience such as private, public or governmental accounting, or accounting experience as an educator, researcher, publisher or military serviceman, or combination thereof;

(c) the rules should not discriminate between the areas of experience."

37-50-204. Rulemaking powers relating to reexaminations. The board shall have power to prescribe by uniform rule for the following:

(1) the terms and conditions under which a candidate who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed;

(2) a reasonable waiting period for a candidate's reexamination in a subject he has failed;

(3) the maximum number of reexaminations for which a candidate may apply;

(4) the fees to be charged each candidate for initial examinations and special examinations, which shall be commensurate with costs. With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined.

History: En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826.

37-50-205. Duties of the department. The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; and

(2) assess to the board the reasonable costs of the department incurred in assisting the board.

History: En. Sec. 21, Ch. 684, L. 1979.

Compiler's Comments

Codification. Sec. 25, Ch. 684, L. 1979, provided: "Sections 21 and 22 are intended to be codified as an integral part of Title 37, chapter 50. The provisions of Title 37, chapter 50, apply to sections 21 and 22, and sections 21 and 22 apply to Title 37, chapter 50. All references in the MCA to Title 37, chapter 50, include sections 21 and 22." Section 21 of the introduced bill was amended out, and section 22 became section 21, codified as section 37-50-205, MCA. These references were overlooked in the amendatory process.

Part 3

Licensing

37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant in some state and is certified under 37-50-302, 37-50-310, or 37-50-311 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person is licensed as a licensed public accountant under this chapter, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335 or unless such person has received a certificate as a certified public accountant in some state, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant may use the title under which he is generally known in this country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current license issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting

or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: **En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979.**

37-50-302. Certified public accountants — certification — qualifications and requirements. Certification as a certified public accountant is available to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules.

History: **En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979.**

37-50-303. Public accountants — licensure — qualifications and requirements. Licensure as a public accountant is available to any person who:

(1) is a citizen of the United States or has declared his intention of becoming a citizen;

(2) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state;

(3) is of good moral character;

(4) meets the requirements of education [and experience] set forth in 37-50-305 [and 37-50-306]; and

(5) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

History: **En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820.**

Compiler's Comments

Correction. The Code Commissioner has inserted brackets around "and experience" and "37-50-306" in subsection (4). Ch. 684, L. 1979, repealed 37-50-306 and amended references to "experience" out of 37-50-305 (the remaining reference in subsection (4)). Subsection (4) was overlooked because the bill enacting Ch. 684, as introduced, repealed 37-50-303, but the Legislature amended out that repealer. See also 37-50-302(3), as amended by Ch. 684, which refers only to "education."

37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) Persons serving in the armed forces of the United States on

July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals in this state in the practice of public accounting as their principal occupation prior to service in the armed forces may register with the department within 6 months after the date of their separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) A person who does not qualify under subsection (1) must fulfill the following additional requirements as a prerequisite to the issuance of a license as a licensed public accountant:

(a) He must pass the written examination in accounting practice.

(b) He must also pass the written examination in either accounting theory or auditing or, instead of the examination in auditing or theory, he must be the holder of a United States treasury card which is in good standing at the time of his sitting for the examination in accounting practice.

(3) The examinations referred to in subsection (2) shall be those prescribed for subjects under 37-50-308 and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.

History: **En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821.**

37-50-305. Education requirements. A candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(1) with a concentration in accounting; or

(2) with a concentration other than accounting if supplemented by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

History: **En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

(a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;

(b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:

(i) the minimum number of accounting credits required;

(ii) subjects of courses allowed as supplementary business-related courses; and

(iii) the total number of credits required in business administration."

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

37-50-308. Examination. Except as provided in 37-1-101(4), the department shall hold and grade a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the department is final in each case. The department may use the examination and grading services of the American institute of certified public accountants. The examination must be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979.

37-50-309. Credit for examinations taken in other states. The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979.

37-50-310. Existing certificates sufficient. Persons who, on July 1, 1969, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter but shall otherwise be subject to all provisions of this chapter. Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-311. Certified public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a public accountant any person otherwise eligible therefor who is the holder of a license as a public accountant, then in full force and effect, issued under the laws of any state or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-313. Registration of foreign accountants — restriction on title used. The board may in its discretion permit the registration of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

History: En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828.

37-50-314. Annual certification or licensure. (1) Annual certificates and licenses to engage in the practice of public accounting in this state shall be issued by the department to certified public accountants and to licensed public accountants. There is an annual certificate or license renewal fee in an amount to be determined by the board. Annual certificates and licenses expire on December 31 of each year and may be renewed for a period of 1 year by certified public accountants and licensed public accountants in good standing on payment of the annual renewal fee.

(2) A person who fails to renew his license or certificate shall promptly surrender it to the board upon request.

(3) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(4) The board may in its discretion waive the requirement stated in subsection (3) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(5) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(6) Subject to subsections (4) and (5), the board may revoke, suspend, or refuse to renew the certificate or license of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "Section 13 allows the Board to prescribe a reasonable annual renewal fee. It is intended that the fee not exceed an amount necessary to meet administrative costs."

37-50-315. Deposit of moneys collected. Fees and other moneys collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board.

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979.

37-50-316. Other license fees prohibited. No license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

History: En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947; 66-1842.

37-50-317 through 37-50-320 reserved.

37-50-321. Revocation, suspension, or refusal to renew certificate or license. After notice and hearing as provided in 37-50-341, the board may revoke or may suspend any certificate issued under 37-50-302 or any license granted under 37-50-303 or may revoke, suspend, or refuse to renew any license issued under 37-50-314 or may censure the holder of any such license for any one or any combination of the following causes:

(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a license to practice public accounting under this chapter;

(2) dishonesty, fraud, or gross negligence in the practice of public accounting;

(3) violation of any of the provisions of 37-50-301;

(4) violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;

(5) conviction of a felony under the laws of any state or of the United States;

(6) conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other state;

(8) suspension or revocation of the right to practice before any state or federal agency.

History: En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979.

Compiler's Comments

Correction. The Code Commissioner has inserted the reference to 37-50-303 (the pre-1979 reference) in the introductory paragraph to replace an apparently incorrect reference to section 21 of the bill enacting Ch. 684, L. 1979. That bill, as introduced, repealed 37-50-303 and replaced it with a new section 21. The Legislature amended the bill to delete the new section and the repealer of 37-50-303, but this reference was overlooked.

37-50-322. Reinstatement of certificate or license to practice. On application in writing and after hearing pursuant to notice, the board may authorize the department to issue a new certificate to a certified public accountant whose certificate has been revoked or may permit the relicensing of anyone whose license has been revoked or may reissue or modify the suspension of a license to practice public accounting which has been revoked or suspended.

History: En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837.

37-50-323 through 37-50-330 reserved.

37-50-331. Partnership composed of certified public accountants — registration. (1) A partnership that is or plans to become engaged in this state in the practice of public accounting shall register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) Each partner or manager personally engaged in this state in the practice of public accounting must be a certified public accountant of some state in good standing and must be certified under this chapter.

(b) Each partner must be a certified public accountant of some state in good standing.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: **En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.**

37-50-332. Corporation composed of certified public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of certified public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(c) Each shareholder, officer, or manager of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of some state in good standing and must be certified under this chapter.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: **En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.**

37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting must register with the department as a partnership of licensed public accountants provided it meets the following requirements:

(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a license to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979.

37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or a licensed public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and must hold a license issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a certificate or license to practice in this state as a certified public accountant or licensed public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979.

37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must be certified or licensed annually under 37-50-314.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979.

37-50-336. Revocation or suspension of partnership or corporation registration. After notice and hearing as provided in 37-50-341, the board shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter either on its own motion or on the complaint of a person.

(2) Hearings and rulemaking proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836.

37-50-342. Violation. Any person who violates any provision of 37-50-301 shall be guilty of a misdemeanor.

History: En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840.

Part 4

Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $2,000 or imprisoned for a period of not less than 90 days or more than 1 year or subjected to both said fine and imprisonment, in the discretion of the court.

History: En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808.

37-50-402. Privileged communications. Except by permission of the client or person or firm or corporation engaging him or the heirs, successors, or personal representatives of such client or person or firm or corporation and except for the expression of opinions on financial statements, no certified public accountant, licensed public accountant, or employee thereof shall be required to nor shall he voluntarily disclose or divulge information of which he may have become possessed relative to and in connection with any professional services as a public accountant. The information derived from or as a result of such professional services shall be deemed confidential and privileged. The provisions of this section shall not apply to the testimony of a public accountant given pursuant to subpoena in a court of competent jurisdiction.

History: En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841.

CHAPTER 51

REAL ESTATE LICENSE ACT

Part 1 — General

Section
37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.
37-51-102. Definitions.
37-51-103. Exemptions.
37-51-104. Chapter supplemental to deceptive practices law.

Part 2 — Board of Realty Regulation

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations.
37-51-202. General licensing power.
37-51-203. Rulemaking power.
37-51-204. Educational programs.
37-51-205. Compensation of members — expenses.
37-51-206. Attorney general to act as attorney for the board.
37-51-207. Schedule of fees.
37-51-208. Deposit of money not otherwise provided for.

Part 3 — Licensing

37-51-301. License required — limited to persons.
37-51-302. Broker or salesman license — qualifications of applicant.
37-51-303. Broker or salesman examination.
37-51-304. Bond required for licensure of broker or salesman.
37-51-305. License — form — delivery — display — pocket card.

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process.
37-51-307. Directory of licensees.
37-51-308. Broker's office — notice to department of change of address.
37-51-309. Broker owner — broker associate — salesman — notice to department of change of association.
37-51-310. Annual renewal.
37-51-311. Fees — deposit of fees.
37-51-312. No taxation by municipality.
Sections 37-51-313 through 37-51-320 reserved.
37-51-321. Revocation or suspension of license — initiation of proceedings — grounds.
37-51-322. Right to notice and hearing.
37-51-323. Penalties — criminal — civil.

Part 4 — Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman.

Part 1

General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of realty regulation provided for in 2-15-1644.

(2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(3) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(4) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(5) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(6) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(7) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(8) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(9) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979.

37-51-103. Exemptions. A single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this chapter, however, shall not:

(1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor;

(2) apply to any person acting as attorney-in-fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting, or leasing of any real estate;

(3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law;

(4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such officer;

(6) apply to public officials in the conduct of their official duties;

(7) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any

hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

History: **En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926.**

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: **En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.**

Part 2

Board of Realty Regulation

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a chairman from among their number.

(2) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department shall keep a record of proceedings, transactions, communications, and official acts of the board; be custodian of the records of the board; and cause to be performed other duties as the board, on the written request of two or more members of the board or at other times as the chairman in his discretion, considers necessary.

(4) Neither the chairman nor an employee of the department hired to provide services to the board may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: **(1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1.**

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: **En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.**

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: **En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).**

Compiler's Comments

Transition. Sec. 10, Ch. 497, L. 1979, provided: "All orders and rules relating to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked or modified in accordance with law by the board of realty regulation. The records and documents of the board of real estate are transferred to the board of realty regulation. Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms and conditions as when issued and are subject to the provisions of Title 37, chapter 51."

37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943.

37-51-205. Compensation of members — expenses. Each member of the board shall receive as compensation for each day actually spent on his official duties the sum of $25 and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of duties for the board.

History: (1)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; (2)En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; Sec. 66-1934, R.C.M. 1947; R.C.M. 1947, 66-1927(3), 66-1934(5); amd. Sec. 4, Ch. 497, L. 1979.

37-51-206. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board moneys in the earmarked revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the earmarked revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979.

Compiler's Comments

Effective date. Sec. 15, Ch. 497, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the earmarked revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979.

Compiler's Comments

Codification instructions. Sec. 2, Ch. 515, L. 1979, provided: "It is intended that section 1 of this act be codified as an integral part of Title 37, chapter 51, part 2, and the provisions of Title 37, chapter 51, apply to section 1 of this act."

Part 3

Licensing

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a real estate broker if every corporate officer and every partner performing the functions of a "broker", as defined in 37-51-102(2), is licensed as a broker. All officers of a corporation or all members of a partnership acting as a broker are in violation of this chapter unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3).

37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(d) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement; and

(e) file an application for license with the department.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board; and

(iii) file an application for license with the department.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979.

37-51-303. Broker or salesman examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.

(3) The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

(4) An applicant who has failed twice in succession to pass the same class of examination is ineligible for a further examination for 6 months.

History: **En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930.**

37-51-304. Bond required for licensure of broker or salesman. No license may be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the department in the sum of $10,000 executed by a surety company authorized to do business in this state in a form approved by the board and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with this chapter and shall pay, to the extent of $10,000, judgments recovered against him for loss or damage to a person arising in the course of the applicant's practice as a real estate broker or salesman. Bonds given by licensees under this chapter, after approval, shall be filed and held in the office of the department. If, for any reason, the bond of a broker or salesman is canceled or voided, the license of the broker or salesman is automatically suspended until the broker or salesman is again fully bonded and the bond has been approved by the board. If the suspension is not terminated by rebonding and approval within 30 days from the date of suspension, the license of the broker or salesman is automatically revoked.

History: **En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.**

37-51-305. License — form — delivery — display — pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) The license of a real estate salesman shall be delivered or mailed to the real estate broker with whom the real estate salesman is associated and shall be kept in the custody and control of the broker.

(3) A broker shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker with whom he is associated.

History: **En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979.**

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process. (1) It is unlawful for a licensed broker to employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker in this state by complying with this chapter. However, this section applies only to brokers of those other states which offer the same privileges to the licensed brokers of this state. The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state and pays to the department the same license fee as is required for obtaining a broker's license in this state. The board may in its discretion refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.

(3) A nonresident broker shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident broker in a county of this state which may be appropriate and designated by Title 25, chapter 2, part 1. The consent shall provide that service of summons in this action may be served on the department for and on behalf of the nonresident broker, and this service is sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent conducting a transaction in a county. The consent shall be acknowledged and, if made by a corporation, shall be authenticated by its seal.

History: **En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936.**

37-51-307. Directory of licensees. The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

History: **En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.**

37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman associated or under contract with the broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.

History: **En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979.**

37-51-309. Broker owner — broker associate — salesman — notice to department of change of association. (1) A salesman may not be associated with or under contract to more than one licensed broker owner, nor may he perform services for a broker other than the one designated on the license issued to the salesman.

(2) When a licensed salesman desires to change his association or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker owner until he has been issued a license to work for or with that broker owner. On termination of a salesman's association or contractual relationship, he shall surrender his license and pocket card to his broker owner who shall return them to the department for cancellation.

(3) Only one license shall be issued to a salesman to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979.

37-51-310. Annual renewal. Annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3).

37-51-311. Fees — deposit of fees. (1) The following fees shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to 37-1-101(6):

(a) for each examination, a fee not to exceed $25;

(b) for each original resident broker's license issued, a fee not to exceed $50;

(c) for each annual renewal of a resident broker's license, a fee not to exceed $30;

(d) for each original nonresident broker's license issued, a fee not to exceed $50;

(e) for each annual renewal of a nonresident broker's license, a fee not to exceed $30;

(f) for each original salesman's license issued, a fee not to exceed $25;

(g) for each annual renewal of a salesman's license, a fee not to exceed $15;

(h) for each additional office or place of business, an annual fee not to exceed $25;

(i) for each change of place of business or change of employer or contractual associate, a fee not to exceed $15;

(j) for each duplicate license, when the original license is lost or destroyed and affidavit is made, a fee not to exceed $10;

(k) for each duplicate pocket card, when the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed $10.

(2) The board shall charge a $5 annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not file a bond with the department as provided in 37-51-304.

(3) The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979.

37-51-312. No taxation by municipality. No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4).

37-51-313 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesman, subject to 37-1-101 and 37-1-102, and may revoke or suspend a license issued under this chapter when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name he does not incorporate his own name in the franchise name or logotype or does not conspicuously display, on his letterhead and other printed materials available to the public, a statement that his office is independently owned and operated. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(2) making any false promises of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salesmen or any medium of advertising or otherwise;

(4) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) failing to account for or to remit money coming into his possession belonging to others;

(6) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

(13) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(15) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter;

(17) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(18) failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979.

37-51-322. Right to notice and hearing. When the board has investigated an application for a real estate broker's or salesman's license or, subject to 37-1-101 and 37-1-102, investigated the actions of a real estate broker or salesman on the sworn complaint in writing of a person or on its own motion and the investigation has revealed reasonable grounds for denying the application or reasonable indication of a violation of this chapter as cause for revoking or suspending a license issued to a real estate broker or salesman, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

37-51-323. Penalties — criminal — civil. (1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940.

Part 4

Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941.

CHAPTER 52

TITLE ABSTRACTERS

Part 1 — General

Section

37-52-101. Definitions.
37-52-102. Exemptions.

Part 2 — Board of Abstracters

37-52-201. Organization — general rulemaking power.
37-52-202. Compensation of board members — expenses.
37-52-203. Records.

Part 3 — Licensing

37-52-301. Business to be supervised by registered abstracter — certificate of authority required — duty to keep abstract books and file bond.
37-52-302. Certificate of registration — application — examination — fee.

37-52-303. Certificate of registration — contents — renewal — fees — temporary certificates.
37-52-304. Certificate of authority — application — fee — renewal — contents.
37-52-305. Deposit of money received.
37-52-306. Seal.
Sections 37-52-307 through 37-52-310 reserved.
37-52-311. Revocation of certificate — grounds — procedure.
37-52-312. Penalty.

Part 4 — Miscellaneous Provisions

37-52-401. Abstract prima facie evidence of its contents.
37-52-402. Compensation of abstracters a matter of contract.

Part 1

General

37-52-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of abstracters provided for in 2-15-1643.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Registered abstracter" means a person who has obtained a certificate of registration by the board under this chapter.

History: En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974; R.C.M. 1947, 66-2101.1.

37-52-102. Exemptions. (1) This chapter does not impair the right of any person to examine the public records and to make such copies or abstracts of instruments filed or recorded as he or she may desire.

(2) Nothing in this chapter shall be construed as prohibiting any person, firm, or corporation holding a valid and subsisting certificate of authority, as herein provided, from employing such additional clerical and stenographic assistants as may be necessary provided that such assistants are at all times under the supervision of a registered abstracter.

(3) The provisions of this chapter shall not apply to county clerk and recorders or persons employed by counties in the preparation of abstracts of title.

History: En. Secs. 17, 18, Ch. 105, L. 1931; re-en. Secs. 4139.17, 4139.18, R.C.M. 1935; R.C.M. 1947, 66-2117(part), 66-2118.

Part 2

Board of Abstracters

37-52-201. Organization — general rulemaking power. (1) The board shall elect a chairman and a secretary. The board may compel the attendance of witnesses, and the chairman and secretary may administer oaths.

(2) The board may make rules necessary for the administration of this chapter.

History: En. Sec. 3, Ch. 105, L. 1931; re-en. Sec. 4139.3, R.C.M. 1935; amd. Sec. 195, Ch. 350, L. 1974; R.C.M. 1947, 66-2103.

37-52-202. Compensation of board members — expenses. Each member of the board shall receive a compensation of $25 per day for actual services while attending meetings or otherwise engaged in business connected with the board and shall receive travel expense reimbursement as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(1).

37-52-203. Records. The department shall keep a register of the names of applicants for registration and for certificates of authority, with their place of business and other information the board considers appropriate, including the action taken by the board and the dates on which certificates of registration and certificates of authority are issued.

History: En. Sec. 5, Ch. 105, L. 1931; re-en. Sec. 4139.5, R.C.M. 1935; amd. Sec. 197, Ch. 350, L. 1974; R.C.M. 1947, 66-2105.

Part 3

Licensing

37-52-301. Business to be supervised by registered abstracter — certificate of authority required — duty to keep abstract books and file bond. (1) Any person, firm, or corporation desiring to engage in or continue the business of making and compiling abstracts of title to real estate within the state of Montana shall have for use in such business a set of abstract books or other system of indexes or records showing, in a sufficiently comprehensive form, all instruments affecting title to real property on file or of record in the office of the county clerk and recorder of each county wherein they abstract the titles of the lands, lots, or tracts of land in said counties or county.

(2) Such person, firm, or corporation shall have in charge of such business a registered abstracter, as herein defined, and shall first obtain a certificate of authority and file and furnish the bond or other securities required and shall comply with the other requirements herein provided, save and except as may be hereinafter expressly excepted.

History: En. Sec. 1, Ch. 105, L. 1931; re-en. Sec. 4139.1, R.C.M. 1935; R.C.M. 1947, 66-2101.

37-52-302. Certificate of registration — application — examination — fee. A person desiring to obtain a certificate of registration under this chapter shall make application to the department and shall pay to the department an examination fee, not to exceed $50, and as set by the board. The application shall be on a form prescribed by the board and shall contain information desired by the board. The board shall fix a date and place for the examination of the applicant, of which notice shall be given the applicant by mail, who shall present himself at the examination. The department, subject to 37-1-101, shall examine the applicant under the rules adopted by the board.

History: En. Sec. 8, Ch. 105, L. 1931; re-en. Sec. 4139.8, R.C.M. 1935; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975; R.C.M. 1947, 66-2108.

37-52-303. Certificate of registration — contents — renewal — fees — temporary certificates. (1) The certificate of registration issued by the department shall recite, among other things, that the holder has complied with this chapter and entitles the holder to take charge of an abstract office holding a certificate of authority under this chapter.

(2) Certificates of registration shall be issued on the payment of a $5 fee and are valid for 1 year from the date of issuance and shall be renewed annually by the department on application within 30 days prior to expiration and on payment of not to exceed $5 to the department and as set by the board.

(3) The board may authorize the department to issue temporary certificates of registration between meetings of the board.

History: En. Sec. 10, Ch. 105, L. 1931; re-en. Sec. 4139.10, R.C.M. 1935; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975; R.C.M. 1947, 66-2110.

37-52-304. Certificate of authority — application — fee — renewal — contents. (1) A person, firm, or corporation desiring to obtain a certificate of authority under this chapter shall make application to the department and shall pay to the department an application fee, not to exceed $25, as set by the board. The application shall be on a form prescribed by the board and shall contain information desired by it.

(2) A person, firm, or corporation who furnishes satisfactory proof to the board that the applicant has for use in the business a set of abstract books or other system of indexes and has in charge of the business a registered abstracter and who furnishes the bond or other securities and pays the application fee is entitled, on compliance with this law, to receive a certificate of authority.

(3) Certificates of authority are valid for 1 year from the date of issuance and shall be renewed by the department on application within 30 days prior to expiration and on payment of a fee not to exceed $25 to the department, which fee shall be set by the board. The application shall be accompanied by an affidavit and such other evidence considered necessary, showing that the applicant has complied with this chapter.

(4) The certificate of authority issued by the department shall, among other things, recite that the bond or other securities have been filed and approved, and the certificate authorizes the person, firm, or corporation named in it to engage in and carry on the business of an abstracter of real estate titles in the county or counties of this state in which the person, firm, or corporation has for use a set of abstract books or system of indexes provided for in 37-52-301 and for that purpose has access to the public records in an office of a city, county, or the state during ordinary office hours to make memoranda or notation therefrom as may be necessary for the purpose of making abstracts and the compiling, posting, copying, and keeping up of their abstract books, indexes, or records.

History: En. Sec. 11, Ch. 105, L. 1931; re-en. Sec. 4139.11, R.C.M. 1935; amd. Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975; R.C.M. 1947, 66-2111.

37-52-305. Deposit of money received. Money received under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(2).

37-52-306. Seal. A person, firm, or corporation furnishing abstracts of title to real property under this chapter shall provide a seal, which shall have stamped on it the name and location of the person, firm, or corporation, and shall deposit with the department an impression of the seal and the names of persons authorized to sign certificates to abstracts before the certificate of authority may be issued. The seal shall be affixed to every abstract or certificate of title issued by the person, firm, or corporation and to every continuation thereof.

History: En. Sec. 14, Ch. 105, L. 1931; re-en. Sec. 4139.14, R.C.M. 1935; amd. Sec. 202, Ch. 350, L. 1974; R.C.M. 1947, 66-2114.

37-52-307 through 37-52-310 reserved.

37-52-311. Revocation of certificate — grounds — procedure. (1) The board may cancel and revoke a certificate of registration issued to a person under this chapter:

(a) for a violation of this chapter;

(b) on a conviction of the holder of the certificate of a crime involving moral turpitude; or

(c) if the board finds the holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices.

(2) The board may also cancel and revoke a certificate of authority issued to a person, firm, or corporation under this chapter:

(a) for failure to maintain indexes and abstract records;

(b) for failure to have in charge of the business a registered abstracter; or

(c) for violation of this chapter.

(3) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) or (2) of this section, the board shall require the holder of the certificate to appear before it on a day fixed by the board to show cause why the certificate should not be canceled.

History: En. Sec. 15, Ch. 105, L. 1931; re-en. Sec. 4139.15, R.C.M. 1935; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977; R.C.M. 1947, 66-2115.

37-52-312. Penalty. Any person, firm, or corporation making, compiling, or certifying to abstracts of title to real property in this state without having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding $600 or less than $100 for each offense.

History: En. Sec. 17, Ch. 105, L. 1931; re-en. Sec. 4139.17, R.C.M. 1935; R.C.M. 1947, 66-2117(part).

Part 4

Miscellaneous Provisions

37-52-401. Abstract prima facie evidence of its contents. Any abstract of title to real estate certified to be true and correct by any abstracter holding a valid and subsisting certificate of authority from the board, as herein provided, shall be received by the courts of this state as prima facie evidence of its contents under such rules as to procedure as such courts may promulgate.

History: En. Sec. 16, Ch. 105, L. 1931; re-en. Sec. 4139.16, R.C.M. 1935; R.C.M. 1947, 66-2116.

37-52-402. Compensation of abstracters a matter of contract. The compensation to be charged and received by abstracters of title shall be and remain a matter of contract between the parties.

History: En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R.C.M. 1921; R.C.M. 1947, 66-2119.

CHAPTERS 53 THROUGH 59

RESERVED

CHAPTER 60

PRIVATE INVESTIGATORS AND PATROLMEN

Part 1 — General

Section
37-60-101. General definitions.
37-60-102. Definition of private investigator.
37-60-103. Definition of private patrol operator.
37-60-104. Restrictions on authority of licensed private patrol operator.
37-60-105. Exemptions.

Part 2 — Director of Department of Licensing

37-60-201. Duty to administer chapter.
37-60-202. Rulemaking power.

Part 3 — Licensing

37-60-301. License required.
37-60-302. Application — form.
37-60-303. Application — contents.
37-60-304. Qualifications of applicants.
37-60-305. Examination.
37-60-306. Denial of license — hearing.
37-60-307. Manager of a licensee.
37-60-308. Temporary operation without individual licensee.
37-60-309. Form of license.
37-60-310. Display of license.
37-60-311. Pocket card.
37-60-312. Annual renewal.
37-60-313. Fees — deposit of fees.
37-60-314. Notice to department of change of name or address.
Sections 37-60-315 through 37-60-320 reserved.
37-60-321. Suspension or revocation.

Part 4 — Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees.
37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry.
37-60-403. Licensee advertising.

37-60-404. Duty to maintain employee records.
37-60-405. Penalty.

Part 1

General

37-60-101. General definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of professional and occupational licensing.

(2) "Director" means the director of the department of professional and occupational licensing.

(3) "Licensee" means a person licensed under this chapter and includes but is not limited to private investigator and private patrol operator.

(4) "Manager" means the individual under whose direction, control, charge, or management the business of a licensee is operated.

(5) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

History: **En. 66-3301 by Sec. 1, Ch. 234, L. 1974; R.C.M. 1947, 66-3301.**

37-60-102. Definition of private investigator. A private investigator within the meaning of this chapter is a person other than an insurance adjuster who, for any consideration whatsoever, engages in business or accepts employment to furnish or agrees to make or makes any investigation for the purpose of obtaining information with reference to:

(1) crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

(2) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(3) the location, disposition, or recovery of lost or stolen property;

(4) the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or

(5) securing evidence to be used before any court, board, officer, or investigating committee.

History: **En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(1).**

37-60-103. Definition of private patrol operator. A private patrol operator or operator of a private patrol service within the meaning of this chapter is a person who, for any consideration whatsoever:

(1) agrees to furnish or furnishes a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or

(2) performs the service of such watchman, guard, patrolman, or other person for any of said purposes.

History: **En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(2).**

37-60-104. Restrictions on authority of licensed private patrol operator. A person licensed as a private patrol operator only may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing enumerated in 37-60-103 which he has been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(3).

37-60-105. Exemptions. This chapter does not apply to:

(1) a person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons;

(4) a charitable, philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit;

(5) an attorney at law in performing his duties as such attorney at law;

(6) a collection agency or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof; or

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

History: En. 66-3306 by Sec. 6, Ch. 234, L. 1974; R.C.M. 1947, 66-3306.

Part 2

Director of Department of Licensing

37-60-201. Duty to administer chapter. The director shall administer and enforce the provisions of this chapter.

History: En. 66-3302 by Sec. 2, Ch. 234, L. 1974; R.C.M. 1947, 66-3302.

37-60-202. Rulemaking power. The director may adopt and enforce reasonable rules:

(1) classifying licensees according to the type of business regulated by this chapter in which they are engaged, including but not limited to private investigators and private patrol operators, and limiting the field and scope of the operations of a licensee to those in which he is classified and qualified to engage;

(2) fixing the qualifications of licensees, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare; and

(3) carrying out generally the provisions of this chapter.

History: En. 66-3303 by Sec. 3, Ch. 234, L. 1974; R.C.M. 1947, 66-3303.

Part 3

Licensing

37-60-301. License required. No person shall engage in a business regulated by this chapter unless he is licensed under this chapter, and no person shall falsely represent that he is employed by a licensee.

History: En. 66-3304 by Sec. 4, Ch. 234, L. 1974; R.C.M. 1947, 66-3304.

37-60-302. Application — form. An application for a license under this chapter shall be on a form prescribed by the director and accompanied by the application fee provided by this chapter.

History: En. 66-3307 by Sec. 7, Ch. 234, L. 1974; R.C.M. 1947, 66-3307.

37-60-303. Application — contents. An application shall be verified and shall include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification or classifications under which the applicant desires to be qualified;

(5) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager;

(6) two recent photographs of the applicant, of a type prescribed by the director, and two classifiable sets of his fingerprints;

(7) a verified statement of his experience qualifications; and

(8) such other information, evidence, statements, or documents as may be required by the director.

History: En. 66-3308 by Sec. 8, Ch. 234, L. 1974; R.C.M. 1947, 66-3308.

37-60-304. Qualifications of applicants. Before a license is granted, the applicant or his manager shall meet all of the following:

(1) be at least 18 years of age;

(2) be a citizen of the United States and a resident of the state of Montana;

(3) be of good moral character and temperate habits; and

(4) comply with such other qualifications concerning training, education, or experience as the director may fix by rule.

History: En. 66-3309 by Sec. 9, Ch. 234, L. 1974; R.C.M. 1947, 66-3309; amd. Sec. 22, Ch. 22, L. 1979.

37-60-305. Examination. The director shall require an applicant or his manager to demonstrate his qualifications by a written examination.

History: En. 66-3310 by Sec. 10, Ch. 234, L. 1974; R.C.M. 1947, 66-3310.

37-60-306. Denial of license — hearing. If a license is denied, the applicant for such license or for renewal thereof may request a hearing within 30 days after notice of denial. Such hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of professional and occupational licensing.

History: En. 66-3311 by Sec. 11, Ch. 234, L. 1974; R.C.M. 1947, 66-3311.

37-60-307. Manager of a licensee. (1) The business of each licensee shall be operated under the direction, control, charge, or management in this state of either the licensee or a manager, but no licensee shall be required to employ more than one manager.

(2) No person shall act as a manager of a licensee until he has complied with each of the following:

(a) demonstrated his qualifications by a written examination, if required by the director; and

(b) made a satisfactory showing to the director that he has the qualifications prescribed by 37-60-304.

History: En. 66-3312 by Sec. 12, Ch. 234, L. 1974; R.C.M. 1947, 66-3312.

37-60-308. Temporary operation without individual licensee. Where the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the licensee for any reason whatever, the business may be carried on for such temporary period and under such terms and conditions as the director shall provide by regulation.

History: En. 66-3313 by Sec. 13, Ch. 234, L. 1974; R.C.M. 1947, 66-3313.

37-60-309. Form of license. The license, when issued, shall be in such form as may be determined by the director and shall include:

(1) the name of the licensee;

(2) the name under which the licensee is to operate;

(3) the number and date of the license.

History: En. 66-3314 by Sec. 14, Ch. 234, L. 1974; R.C.M. 1947, 66-3314.

37-60-310. Display of license. The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

History: En. 66-3315 by Sec. 15, Ch. 234, L. 1974; R.C.M. 1947, 66-3315.

37-60-311. Pocket card. Upon the issuance of a license, a pocket card of such size, design, and content as may be determined by the director shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed. When any person to whom a card is issued terminates his position, office, or association with the licensee, the card shall be surrendered to the licensee and within 5 days thereafter shall be mailed or delivered by the licensee to the department for cancellation.

History: En. 66-3316 by Sec. 16, Ch. 234, L. 1974; R.C.M. 1947, 66-3316.

37-60-312. Annual renewal. Licenses issued under this chapter and the pocket cards issued pursuant thereto shall expire at 12 midnight on June 30 of each year if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the director and pay the renewal fee prescribed by this chapter.

History: En. 66-3329 by Sec. 29, Ch. 234, L. 1974; R.C.M. 1947, 66-3329.

37-60-313. Fees — deposit of fees. (1) The amount of fees prescribed by this chapter, unless otherwise fixed, is that fixed in the following schedule:

(a) An application for an original license in any classification shall be accompanied by an investigation fee of $25.

(b) The annual fee for an original license or renewal thereof shall be fixed by the director but shall not exceed $50.

(2) Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter.

History: **En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975; R.C.M. 1947, 66-3330.**

37-60-314. Notice to department of change of name or address. A licensee shall notify the department of any and all changes of his address, of the name under which he does business, and of any change in its officers or partners within 30 days after such change.

History: **En. 66-3317 by Sec. 17, Ch. 234, L. 1974; R.C.M. 1947, 66-3317.**

37-60-315 through 37-60-320 reserved.

37-60-321. Suspension or revocation. The director may suspend or revoke a license issued under this chapter if he determines that the licensee or his manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager has:

(1) made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license;

(2) violated any provisions of this chapter;

(3) violated any rule of the director adopted pursuant to the authority contained in this chapter;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon and as a result of such conviction is under state supervision;

(5) impersonated or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license was expired, which would be cause for the suspension or revocation of a license or grounds for the denial of an application for a license;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties; or

(8) knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

History: **En. 66-3327 by Sec. 27, Ch. 234, L. 1974; R.C.M. 1947, 66-3327.**

Part 4

Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: **En. 66-3318 by Sec. 18, Ch. 234, L. 1974; R.C.M. 1947, 66-3318.**

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a private investigator may use a badge in connection with the official activities of the licensee's business.

(5) No private patrol licensee or officer, director, partner, manager, or employee of a private patrol licensee may use a badge except while engaged in guard or patrol work and while wearing a uniform.

(6) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(7) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977; R.C.M. 1947, 66-3319.

37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the department.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974; R.C.M. 1947, 66-3321.

37-60-404. Duty to maintain employee records. Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the director.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974; R.C.M. 1947, 66-3320.

37-60-405. Penalty. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by fine not to exceed $500 or by imprisonment in the county jail not to exceed 6 months or by both such fine and imprisonment.

History: En. 66-3328 by Sec. 28, Ch. 234, L. 1974; R.C.M. 1947, 66-3328.

CHAPTER 61

ATTORNEYS AT LAW

Part 1 — Licensing Authorities

Sections

37-61-101. Supreme court may establish rules.
37-61-102. Attorneys' examining board — appointment, quorum, and powers.

37-61-103. Compensation and expenses of members of board.

Part 2 — Licensing

37-61-201. Who considered to be practicing law.
37-61-202. Who may be admitted as attorney.
37-61-203. Clerk, sheriff, or coroner may not practice law.
37-61-204. Qualifications, examination, and admission.
37-61-205. Application fees.
37-61-206. Certificate of admission and license.
37-61-207. Oath.
37-61-208. Admission of attorneys from other states.
37-61-209. Roll of attorneys.
37-61-210. Penalty for practicing without license.
37-61-211. Annual license tax — municipal tax prohibited.
37-61-212. Collection of delinquent license tax.
37-61-213. Disposition of license tax.
37-61-214. Penalty for practicing without certificate indicating payment of tax.
37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden.

Part 3 — Disbarment and Suspension

37-61-301. Disbarment.
37-61-302. Record of conviction.
37-61-303. Proceedings required on receipt of record of conviction.
37-61-304. Complaints filed in office of clerk.
37-61-305. Complaints filed with attorney general or district judge.
37-61-306. Special investigator.
37-61-307. Supreme court to make procedural rules — referees.
37-61-308. Witness fees and expenses.
37-61-309. Judgment.

Part 4 — Provisions Regulating Practice

37-61-401. Authority of attorney.
37-61-402. Production of proof of authority to court.
37-61-403. Change of attorney.
37-61-404. Notice of change.
37-61-405. Death or removal of attorney.
37-61-406. Penalty for deceit.
37-61-407. Penalty for delay.
37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action.
37-61-409. Penalty for violation.
37-61-410. Limitation.
37-61-411. Same rule when party prosecutes in person.
37-61-412. Partner of public prosecutor not to defend.
37-61-413. Former public prosecutors not to defend.
37-61-414. Partners not to appear on opposite sides.
37-61-415. Penalty for violation of two preceding sections.
37-61-416. Party may appear in person or by attorney.
37-61-417. Attorney may defend in person.
37-61-418. Attorney may see prisoner.
37-61-419. Attorney not to become surety on bond.
37-61-420. Judgment lien for compensation.

Part 1

Licensing Authorities

37-61-101. Supreme court may establish rules. The supreme court may establish rules for the admission of attorneys and counselors not inconsistent with this chapter.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1) The supreme court is hereby authorized and empowered to appoint five members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The court may release, dismiss, or remove any member of said board and appoint other members in his or their stead at any time.

(2) A majority of said board shall constitute a quorum and have the power to conduct examinations.

(3) The board shall perform such duties and render such assistance in the examinations of applicants as may be prescribed by the court and shall be governed and controlled by such rules as the court may prescribe. It shall be optional with the supreme court to appoint said board or to require the assistance of said board when appointed.

History: En. Sec. 5, Ch. 90, L. 1917; re-en. Sec. 8948, R.C.M. 1921; re-en. Sec. 8948, R.C.M. 1935; R.C.M. 1947, 93-2013.

37-61-103. Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination and also when away from their homes or places of residence, as provided for in 2-18-501 through 2-18-503, and shall be paid such compensation for services performed by them as members of said board as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949 R.C.M. 1921; re-en. Sec. 8949, R.C.M. 1935; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 439, L. 1975; R.C.M. 1947, 93-2014.

Part 2

Licensing

37-61-201. Who considered to be practicing law. Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.

History: En. Sec. 1, Ch. 90, L. 1917; re-en. Sec. 8944, R.C.M. 1921; re-en. Sec. 8944, R.C.M. 1935; R.C.M. 1947, 93-2009.

37-61-202. Who may be admitted as attorney. Any citizen or person, resident of this state, who has bona fide declared his or her intention to become a citizen in the manner required by law, of good moral character, and who possesses the necessary qualifications of learning and ability is entitled to admission as attorney and counselor in all the courts of this state.

History: En. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 275; re-en. Sec. 8936, R.C.M. 1935; amd. Sec. 11, Ch. 168, L. 1971; R.C.M. 1947, 93-2001(part).

37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner must not, during his continuance in office, practice as attorney and counselor in any court.

History: En. Sec. 429, C. Civ. Proc. 1895; re-en. Sec. 6421, Rev. C. 1907; re-en. Sec. 8992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8992, R.C.M. 1935; R.C.M. 1947, 93-2119.

37-61-204. Qualifications, examination, and admission. Each applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character and a certificate of one or more reputable counselors at law that he has been engaged in the study of law for 2 successive years prior to the making of such application and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court. The form and manner of the examination shall be as the justices may from time to time determine. However, a diploma from the university of Montana law school at Missoula or other evidence of having completed the 3-year course in law of that school entitles the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court to order an examination as in ordinary cases of applicants without such diploma or evidence.

History: En. Sec. 391, C. Civ. Proc. 1895; re-en. Sec. 6382, Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1915; re-en. Sec. 8937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 276; re-en. Sec. 8937, R.C.M. 1935; amd. Sec. 35, Ch. 101, L. 1977; R.C.M. 1947, 93-2002.

37-61-205. Application fees. (1) Every applicant for admission to the bar, by examination or otherwise, must pay to the clerk of the supreme court at the time he files his application for examination or his petition for admission the sum of $25. Should the applicant fail in the examination taken by him, he may take another examination before the board at any time within 1 year thereafter without further payment. No other fee shall be exacted for admission of any applicant if admitted within 1 year after the payment of the fee of $25 hereinabove designated.

(2) All money collected from fees herein provided for shall be deposited with the state treasurer by the clerk of the supreme court and placed in the general fund.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R.C.M. 1921; re-en. Sec. 8950, R.C.M. 1935; amd. Sec. 83, Ch. 147, L. 1963; R.C.M. 1947, 93-2015.

37-61-206. Certificate of admission and license. If upon examination he is found qualified, the supreme court must admit him as an attorney and counselor in all the courts of this state and must direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.

History: En. Sec. 392, C. Civ. Proc. 1895; re-en. Sec. 6383, Rev. C. 1907; re-en. Sec. 8938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 277; re-en. Sec. 8938, R.C.M. 1935; R.C.M. 1947, 93-2003.

37-61-207. Oath. Every person on his admission must take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of his knowledge and ability. A certificate of such oath must be endorsed upon the license and a duplicate filed with the clerk.

History: En. Sec. 393, C. Civ. Proc. 1895; re-en. Sec. 6384, Rev. C. 1907; re-en. Sec. 8939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 278; re-en. Sec. 8939, R.C.M. 1935; R.C.M. 1947, 93-2004.

37-61-208. Admission of attorneys from other states. Every citizen of the United States or person resident of this state who has bona fide declared his or her intention to become a citizen in the manner required by law who has been admitted to practice law in the highest courts of another state or of a foreign country where the common law of England constitutes the basis of jurisprudence may be admitted to practice in the courts of this state upon the production of his or her license and satisfactory evidence of good moral character, but the court may examine the applicant as to his or her qualifications. However, any person who is a nonresident of the state of Montana and who has been admitted and is at the time authorized to practice law in the highest courts of another state or of a foreign country may, upon motion of any attorney admitted to practice in the courts of this state, be permitted by the court to appear as attorney in any action or proceeding in such court and shall, when so permitted, be entitled to the same rights and privileges and be subject to the same duties and obligations with respect to such actions or proceedings as an attorney duly admitted to practice in the courts of this state.

History: En. Sec. 394, C. Civ. Proc. 1895; re-en. Sec. 6385, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1911; re-en. Sec. 8940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 279; re-en. Sec. 8940, R.C.M. 1935; R.C.M. 1947, 93-2005.

37-61-209. Roll of attorneys. The clerk of the supreme court must keep a roll of the attorneys and counselors admitted to practice, which must be signed by the person admitted before he receives his license.

History: En. Sec. 395, C. Civ. Proc. 1895; re-en. Sec. 6386, Rev. C. 1907; re-en. Sec. 8941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 280; re-en. Sec. 8941, R.C.M. 1935; R.C.M. 1947, 93-2006.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney and counselor, he is guilty of a contempt of court.

History: En. Sec. 397, C. Civ. Proc. 1895; re-en. Sec. 6388, Rev. C. 1907; re-en. Sec. 8943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 281; re-en. Sec. 8943, R.C.M. 1935; R.C.M. 1947, 93-2008.

37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state shall be required to pay a license tax of $10 per annum, which tax shall be payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of such tax, the clerk shall issue and deliver a certificate to the person paying the same, certifying to the payment of said license tax and stating the period covered by said payment.

(3)No license tax shall be imposed upon attorneys by a municipality or any other subdivision of the state.

History: En. Sec. 2, Ch. 90, L. 1917; re-en. Sec. 8945, R.C.M. 1921; re-en. Sec. 8945, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1961; R.C.M. 1947, 93-2010.

37-61-212. Collection of delinquent license tax. If any practicing attorney or counselor at law shall fail, neglect, or refuse to pay to the clerk of the supreme court the license tax imposed by this chapter for a period of 30 days after the same is due and payable, it shall be the duty of the clerk of the supreme court to take such action for the collection of the same as is required of the county treasurer in cases of nonpayment of other licenses, as provided by 7-21-2116, and the provisions of 7-21-2115 through 7-21-2117 shall control in said proceedings so far as the same are applicable thereto.

History: En. Sec. 16, Ch. 90, L. 1917; re-en. Sec. 8959, R.C.M. 1921; re-en. Sec. 8959, R.C.M. 1935; R.C.M. 1947, 93-2024.

37-61-213. Disposition of license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R.C.M. 1921; re-en. Sec. 8946, R.C.M. 1935; amd. Sec. 81, Ch. 147, L. 1963; R.C.M. 1947, 93-2011.

37-61-214. Penalty for practicing without certificate indicating payment of tax. No attorney shall practice or be permitted to practice his profession in any of the courts of record in this state until he shall have paid such license tax for the current fiscal year and procured a certificate, as hereinabove provided, and any attorney violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.

History: En. Sec. 4, Ch. 90, L. 1917; re-en. Sec. 8947, R.C.M. 1921; re-en. Sec. 8947, R.C.M. 1935; R.C.M. 1947, 93-2012.

37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden. It shall be unlawful for any court within this state to allow attorneys' fees in any action or proceeding before said court in which attorneys' fees are allowed by law to either party to such action or proceeding when such party is represented by anyone other than a duly admitted or licensed attorney at law.

History: En. Sec. 15, Ch. 90, L. 1917; re-en. Sec. 8958, R.C.M. 1921; re-en. Sec. 8958, R.C.M. 1935; R.C.M. 1947, 93-2023.

Part 3

Disbarment and Suspension

37-61-301. Disbarment. (1) The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law.

(2) An attorney and counselor may be removed or suspended for any of the following causes arising after his admission to practice:

(a) his conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear and any violation of the oath taken by him or of his duties as such attorney and counselor;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part).

37-61-302. Record of conviction. In case of the conviction of an attorney and counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had shall, within 30 days thereafter, transmit to the supreme court a certified copy of the record of conviction.

History: En. Sec. 417, C. Civ. Proc. 1895; re-en. Sec. 6409, Rev. C. 1907; re-en. Sec. 8962, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 288; re-en. Sec. 8962, R.C.M. 1935; R.C.M. 1947, 93-2027.

37-61-303. Proceedings required on receipt of record of conviction. The proceedings to remove or suspend an attorney and counselor under 37-61-301(2)(a) must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the subsections (2)(b), (2)(c), or (2)(d) of 37-61-301 may be taken by the court for the matters within its knowledge or may be taken upon the information of another.

History: En. Sec. 418, C. Civ. Proc. 1895; re-en. Sec. 6410, Rev. C. 1907; re-en. Sec. 8963, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 289; re-en. Sec. 8963, R.C.M. 1935; R.C.M. 1947, 93-2028.

37-61-304. Complaints filed in office of clerk. Whenever any verified complaint is filed in the office of the clerk of the supreme court charging any attorney or counselor at law with having violated his oath as an attorney or counselor or with having otherwise been guilty of conduct authorizing or justifying his suspension from practice or disbarment, it shall be the duty of the attorney general to represent such complaint in such action or proceeding and to prosecute the same. He shall first investigate the charges made and determine whether or not a trial thereof should be had and report the results of his investigation to the justices of the supreme court. If in his judgment or in the judgment of the justices of the supreme court a trial should be had, the clerk of the supreme court shall, upon the direction of the attorney general or any justice of the supreme court, issue a summons in the form of a summons in a civil action, setting forth, in brief, the charges contained in the complaint and requiring said attorney to appear and answer said complaint within such time as the court may designate.

History: En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.

37-61-305. Complaints filed with attorney general or district judge. (1) Whenever any verified complaint is made in writing to the attorney general that any attorney has violated his oath or otherwise been guilty of professional misconduct or other conduct authorizing or justifying his suspension from practice or his disbarment, it shall be the duty of the attorney general to investigate the charges so made. If from such investigation, he shall determine that a complaint should be filed in the supreme court of such charges and a trial thereof had, he shall file in the office of the clerk of the supreme court a complaint against such attorney, setting forth in concise language the acts or conduct charged or complained of; whereupon, the clerk of said court shall issue a summons for the appearance and answer of the party complained of, as provided in the last preceding section. Said summons and the summons as provided for in the preceding section shall be served in the same manner as provided for the service of summons in civil actions. In making such investigations, the attorney general or the special deputy or counsel appointed to act in such matter shall have power to subpoena witnesses and require the production of books, documents, and other instruments and to administer oaths.

(2) Whenever a complaint is made in writing to any judge of a district court or to the supreme court against any attorney charging him with misconduct or other acts as in parts 1 through 3 of this chapter specified, the same shall be immediately forwarded to the attorney general, with the certificate of the clerk of such court, setting forth the time of the filing of said complaint in said court and the name and residence of the complainant and the residence and post-office address of the accused, and it shall be the duty of the attorney general thereupon to investigate such charges in the manner provided in parts 1 through 3 of this chapter.

History: En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.

37-61-306. Special investigator. The attorney general or the supreme court may, when deemed necessary, appoint some attorney as special counsel or deputy to investigate any such charges and to prosecute any disbarment proceedings instituted. The attorney so appointed shall be entitled to receive his necessary expenses therein and a reasonable compensation for his services to be fixed by the supreme court.

History: En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.

37-61-307. Supreme court to make procedural rules — referees. (1) The supreme court may make rules regulating pleadings, practice, and procedure in such action or proceeding; and in the absence of such rules, the law relating to pleadings, practice, and procedure in civil actions, so far as applicable, shall control.

(2) The court may order a reference as authorized by Rule 53, M.R.Civ.P.; and in the event of a reference, the referee or referees shall have the powers provided in such rule and shall receive such compensation as shall be fixed and allowed by the supreme court.

History: En. Sec. 11, Ch. 90, L. 1917; re-en. Sec. 8954, R.C.M. 1921; re-en. Sec. 8954, R.C.M. 1935; R.C.M. 1947, 93-2019.

37-61-308. Witness fees and expenses. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R.C.M. 1921; re-en. Sec. 8955, R.C.M. 1935; amd. Sec. 84, Ch. 147, L. 1963; R.C.M. 1947, 93-2020.

37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys and counselors of the court and that he be precluded from practicing as such attorney or counselor in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney or counselor in the courts of this state permanently or for a limited period.

History: En. Sec. 428, C. Civ. Proc. 1895; re-en. Sec. 6420, Rev. C. 1907; re-en. Sec. 8973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 299; re-en. Sec. 8973, R.C.M. 1935; R.C.M. 1947, 93-2038.

Part 4

Provisions Regulating Practice

37-61-401. Authority of attorney. (1) An attorney and counselor has authority to:

(a) bind his client in any steps of an action or proceeding by his agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment unless a revocation of his authority is filed and, upon the payment thereof and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of his attorney of record in said action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of such party until such attorney shall withdraw his appearance in said action or proceeding or some other attorney shall be substituted for him or his authority shall be otherwise terminated and entry thereof made to appear in the record of such action or proceeding.

History: En. Sec. 398, C. Civ. Proc. 1895; re-en. Sec. 6389, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1915; re-en. Sec. 8974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 283; re-en. Sec. 8974, R.C.M. 1935; R.C.M. 1947, 93-2101.

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which he appears and may stay all proceedings until such is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

History: En. Sec. 431, C. Civ. Proc. 1895; re-en. Sec. 6423, Rev. C. 1907; re-en. Sec. 8994, R.C.M. 1921; re-en. Sec. 8994, R.C.M. 1935; R.C.M. 1947, 93-2121.

37-61-403. Change of attorney. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(1) upon consent of both client and attorney, filed with the clerk or entered upon the minutes;

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

History: En. Sec. 399, C. Civ. Proc. 1895; re-en. Sec. 6390, Rev. C. 1907; re-en. Sec. 8975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 284; re-en. Sec. 8975, R.C.M. 1935; R.C.M. 1947, 93-2102.

37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then he must recognize the former attorney.

History: En. Sec. 400, C. Civ. Proc. 1895; re-en. Sec. 6391, Rev. C. 1907; re-en. Sec. 8976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 285; re-en. Sec. 8976, R.C.M. 1935; R.C.M. 1947, 93-2103.

37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

History: En. Sec. 401, C. Civ. Proc. 1895; re-en. Sec. 6392, Rev. C. 1907; re-en. Sec. 8977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 286; re-en. Sec. 8977, R.C.M. 1935; R.C.M. 1947, 93-2104.

37-61-406. Penalty for deceit. An attorney or counselor who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. He is also guilty of a misdemeanor.

History: En. Sec. 403, C. Civ. Proc. 1895; re-en. Sec. 6395, Rev. C. 1907; re-en. Sec. 8978, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8978, R.C.M. 1935; R.C.M. 1947, 93-2105.

37-61-407. Penalty for delay. An attorney and counselor who willfully delays his client's cause with a view to his own gain or willfully receives money or an allowance for or on account of money which he has not laid out or become answerable for forfeits to the party injured treble damages.

History: En. Sec. 404, C. Civ. Proc. 1895; re-en. Sec. 6396, Rev. C. 1907; re-en. Sec. 8979, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8979, R.C.M. 1935; R.C.M. 1947, 93-2106.

37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action. (1) An attorney and counselor must not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action thereon.

(2) An attorney and counselor must not, by himself or by or in the name of another person, either before or after action brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in his hands or in the hands of another person a demand of any kind for the purpose of bringing an action thereon. This subsection does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

History: (1)En. Sec. 405, C. Civ. Proc. 1895; re-en. Sec. 6397, Rev. C. 1907; re-en. Sec. 8980, R.C.M. 1921; Cal. Pen. C. Sec. 161; re-en. Sec. 8980, R.C.M. 1935; Sec. 93-2107, R.C.M. 1947; (2)En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; Sec. 93-2108, R.C.M. 1947; R.C.M. 1947, 93-2107, 93-2108(part).

37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; R.C.M. 1947, 93-2108(part); amd. Sec. 23, Ch. 22, L. 1979.

37-61-410. Limitation. Sections 37-61-407 through 37-61-409 do not prohibit the receipt by an attorney or counselor of a bond, promissory note, bill of exchange, book debt, or other thing in action in payment for property sold or for services actually rendered or for a debt antecedently contracted or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance and without intent to violate any of those sections.

History: En. Sec. 407, C. Civ. Proc. 1895; re-en. Sec. 6399, Rev. C. 1907; re-en. Sec. 8982, R.C.M. 1921; re-en. Sec. 8982, R.C.M. 1935; R.C.M. 1947, 93-2109.

37-61-411. Same rule when party prosecutes in person. Sections 37-61-407 through 37-61-410 apply to a person prosecuting an action in person who does an act which an attorney and counselor is therein forbidden to do.

History: En. Sec. 408, C. Civ. Proc. 1895; re-en. Sec. 6400, Rev. C. 1907; re-en. Sec. 8983, R.C.M. 1921; re-en. Sec. 8983, R.C.M. 1935; R.C.M. 1947, 93-2110.

37-61-412. Partner of public prosecutor not to defend. An attorney and counselor must not directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom he is interested or connected, either directly or indirectly, as a law partner; or take or receive, directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement whatever, express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 409, C. Civ. Proc. 1895; re-en. Sec. 6401, Rev. C. 1907; re-en. Sec. 8984, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8984, R.C.M. 1935; R.C.M. 1947, 93-2111.

37-61-413. Former public prosecutors not to defend. An attorney and counselor who has brought, carried on, aided, advocated, or prosecuted or has been in anywise connected with an action or special proceeding, civil or criminal, as attorney general, county attorney, or other public prosecutor, must not, at any time thereafter, directly or indirectly advise concerning, aid, or take any part in the defense thereof; or take or receive, either directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, either express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 410, C. Civ. Proc. 1895; re-en. Sec. 6402, Rev. C. 1907; re-en. Sec. 8985, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8985, R.C.M. 1935; R.C.M. 1947, 93-2112.

37-61-414. Partners not to appear on opposite sides. Whenever a law partnership or any member thereof accepts employment to prosecute or defend any action, civil or criminal, or to advise in relation thereto, no member of said partnership is permitted, then or afterward, to act as attorney or counselor on the side opposite to that upon which such original employment was had. This section does not prevent a person who has been employed as attorney and counselor in an action or proceeding before becoming a member of a partnership from appearing and acting therein until its completion.

History: En. Sec. 411, C. Civ. Proc. 1896; Re-en. Sec. 6403, Rev. C. 1907; re-en. Sec. 8986, R.C.M. 1921; re-en. Sec. 8986, R.C.M. 1935; R.C.M. 1947, 93-2113.

37-61-415. Penalty for violation of two preceding sections. An attorney and counselor who violates either 37-61-413 or 37-61-414 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 412, C. Civ. Proc. 1895; re-en. Sec. 6404, Rev. C. 1907; re-en. Sec. 8987, R.C.M. 1921; re-en. Sec. 8987, R.C.M. 1935; R.C.M. 1947, 93-2114.

37-61-416. Party may appear in person or by attorney. A party to a civil action who is of full age may prosecute or defend the same in person or by attorney at his election unless he has been judicially declared to be incompetent to manage his affairs. Each provision of this part relating to the conduct of an action wherein the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed therein or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, he cannot appear or act in person where an attorney may appear or act either by special provisions of law or by the course and practice of the court.

History: En. Sec. 413, C. Civ. Proc. 1895; re-en. Sec. 6405, Rev. C. 1907; re-en. Sec. 8988, R.C.M. 1921; re-en. Sec. 8988, R.C.M. 1935; R.C.M. 1947, 93-2115.

37-61-417. Attorney may defend in person. This part does not prohibit an attorney or counselor from defending himself in person if prosecuted either civilly or criminally.

History: En. Sec. 414, C. Civ. Proc. 1895; re-en. Sec. 6406, Rev. C. 1907; re-en. Sec. 8989, R.C.M. 1921; Cal. Pen. C. Sec. 163; re-en. Sec. 8989, R.C.M. 1935; R.C.M. 1947, 93-2116.

37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of his liberty for any alleged cause whatever must admit any practicing attorney and counselor at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

History: En. Sec. 13, p. 373, Bannack Stat.; re-en. Sec. 13, p. 378, Cod. Stat. 1871; re-en. Sec. 52, 5th Div. Rev. Stat. 1879; re-en. Sec. 114, 5th Div. Comp. Stat. 1887; re-en. Sec. 415, C. Civ. Proc. 1895; re-en. Sec. 6407, Rev. C. 1907; re-en. Sec. 8990, R.C.M. 1921; re-en. Sec. 8990, R.C.M. 1935; R.C.M. 1947, 93-2117.

37-61-419. Attorney not to become surety on bond. No attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or in any bond or recognizance for the appearance of any person or persons charged with any public offense or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal without the consent of the judge of the district court first had approving said security.

History: En. Sec. 14, p. 373, Bannack Stat.; re-en. Sec. 14, p. 378, Cod. Stat. 1871; re-en. Sec. 53, 5th Div. Rev. Stat. 1879; re-en. Sec. 115, 5th Div. Comp. Stat. 1887; re-en. Sec. 416, C. Civ. Proc. 1895; re-en. Sec. 6408, Rev. C. 1907; re-en. Sec. 8991, R.C.M. 1921; re-en. Sec. 8991, R.C.M. 1935; R.C.M. 1947, 93-2118.

37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision, or judgment in his client's favor and the proceeds thereof in whose hands they may come. Such lien cannot be affected by any settlement between the parties before or after judgment.

History: En. Sec. 430, C. Civ. Proc. 1895; re-en. Sec. 6422, Rev. C. 1907; re-en. Sec. 8993, R.C.M. 1921; re-en. Sec. 8993, R.C.M. 1935; R.C.M. 1947, 93-2120.

CHAPTERS 62 THROUGH 64

RESERVED

CHAPTER 65

ARCHITECTURE

Part 1 — General

Section
37-65-101. Purpose.
37-65-102. Definitions.
37-65-103. Exemptions.

Part 2 — Board of Architects

37-65-201. Organization — meetings — records.
37-65-202. Compensation of board members — expenses.
37-65-203. Exclusive licensing jurisdiction — no additional fee.

Part 3 — Licensing

37-65-301. Certificate required.
37-65-302. Registration limited to individuals.
37-65-303. Application — examination — issuance of certificate.
37-65-304. Examination fee — deposit of fee.
37-65-305. Licensing of architects from other states.
37-65-306. Annual renewal — fee — continuing education.
37-65-307. Deposit of license fees.
37-65-308. Seal of architect.
37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.
Sections 37-65-310 through 37-65-320 reserved.
37-65-321. Revocation of certificate — grounds — right to notice and hearing.
37-65-322. Penalty.
37-65-323. Injunction.

Part 1

General

37-65-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977; R.C.M. 1947, 66-101.1.

37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1651.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(5) "Practice of architecture" means rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other services in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(2); amd. Sec. 5, Ch. 388, L. 1979.

37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

(3) None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.

(4) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings which are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(b), (c).

Part 2

Board of Architects

37-65-201. Organization — meetings — records. (1) The board must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer and must have a seal.

(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.

(3) The board shall meet at places the board determines during the first week of April of each year and at other times.

(4) The department must keep a record of proceedings of the board.

(5) The department must keep a register of applicants for a certificate, with the name and age of applicants, the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R.C.M. 1921; re-en. Sec. 3230, R.C.M. 1935; amd. Sec. 25, Ch. 350, L. 1974; R.C.M. 1947, 66-102.

37-65-202. Compensation of board members — expenses. Each member of the board is allowed the sum of $25 per day plus mileage and travel expenses as provided for in 2-18-501 through 2-18-503, while in the discharge of his actual duties.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(1).

37-65-203. Exclusive licensing jurisdiction — no additional fee. The board is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(2).

Part 3

Licensing

37-65-301. Certificate required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "registered architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(1).

37-65-302. Registration limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be registered as an architect. Only individuals shall be registered as architects, but a number of architects constituting a firm may use the collective title "architects" or "registered architects".

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(a).

37-65-303. Application — examination — issuance of certificate. (1) A person wishing to practice architecture in this state shall apply to the department for a certificate to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a certificate to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 388, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 498 (Ch. 388, L. 1979) provided in part: "Section 6 allows the board to modify the standard national council of architectural registration board's examination and grading procedure. It is contemplated that the board may, in its discretion, adopt rules to modify specific questions for purposes of tailoring them to the Montana situation."

37-65-304. Examination fee — deposit of fee. (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed by the board.

(2) The money received from the applicant shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R.C.M. 1921; re-en. Sec. 3236, R.C.M. 1935; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974; R.C.M. 1947, 66-108; amd. Sec. 7, Ch. 388, L. 1979.

37-65-305. Licensing of architects from other states. An architect holding a valid and current license to practice in another state, territory, or country will be granted a certificate to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part).

37-65-306. Annual renewal — fee — continuing education. (1) A licensed architect in this state who desires to continue the practice of his profession shall annually during the month of July, during the time he continues in this practice:

(a) pay to the department a reasonable fee as prescribed by the board; and

(b) present evidence to the board of compliance with any continuing education requirements imposed by the board.

(2) (a) The board may by rule prescribe continuing education requirements for license renewal. If the board prescribes continuing education requirements, the rules shall provide for the method of compliance, such as:

(i) attendance at approved classroom or seminar-type instruction programs; or

(ii) passing an examination.

(b) If classroom or seminar-type instruction is required, the board shall by rule:

(i) make determinations as to approved programs; and

(ii) prescribe the number of hours required for compliance.

(c) If an examination is required, the board shall by rule prescribe:

(i) the subjects of the examination; and

(ii) the grade required to pass the examination.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(1); amd. Sec. 8, Ch. 388, L. 1979; (2)En. Sec. 9, Ch. 388, L. 1979.

Compiler's Comments

Codification. Sec. 11, Ch. 388, L. 1979, provided: "Section 9 [37-65-306(2)] is intended to be codified as an integral part of Title 37, chapter 65. The provisions of Title 37, chapter 65, apply to section 9, and section 9 applies to the provisions of Title 37, chapter 65. All references in the MCA to Title 37, chapter 65, include section 9."

Statement of intent. The statement of intent attached to SB 498 (Ch. 388, L. 1979) provided in part: "Section 8 allows the board to prescribe a reasonable annual renewal fee. It is intended that the fee not exceed an amount necessary to meet administrative costs.

Sections 8 and 9 give the board authority to adopt rules imposing continuing education requirements. The board is not required to adopt such rules. It is contemplated that such rules, if adopted, should address the following:

(a) types of programs required such as classroom instruction, seminars, examinations, or a combination thereof;

(b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, and course content;

(c) the number of hours of instruction, if any, required;

(d) the basic content and the procedures and passing grade for any examinations required;

(e) alternative methods of fulfilling the requirements such as home study, intrafirm or intracompany group study programs or active practice for a prescribed period;

(f) standards for waiver of the requirements for hardship reasons; and

(g) methods of monitoring compliance."

37-65-307. Deposit of license fees. All fees and moneys received by the department for licenses from practicing architects shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(2).

37-65-308. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana", with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R.C.M. 1921; re-en. Sec. 3233, R.C.M. 1935; R.C.M. 1947, 66-105.

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

37-65-310 through 37-65-320 reserved.

37-65-321. Revocation of certificate — grounds — right to notice and hearing. (1) The board may revoke a certificate if proof satisfactory to the board is presented of the following:

(a) The certificate was obtained through fraud or misrepresentation.

(b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice.

(c) The holder of the certificate has been by the board found guilty of gross incompetency or of recklessness in the planning or construction of buildings.

(d) The holder of the certificate has violated standards of professional conduct adopted by the board.

(2) The board may revoke a certificate if the holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct:

(a) willful departure, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(b) willful violation of the building codes of this state or a political subdivision;

(c) aiding or abetting an unlicensed person to violate or evade this chapter; or

(d) sealing or signing plans or specifications not prepared under his direct supervision and control.

(3) A certificate may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing.

(4) If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of 30 days from the final decision adverse to the party.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112.

37-65-322. Penalty. Any person who shall use the title "architect" or "registered architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $200 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(1).

37-65-323. Injunction. Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this chapter or rule of the board, it may, in addition to the remedies provided in 37-65-322 and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(2).

CHAPTER 66

LANDSCAPE ARCHITECTURE

Part 1 — General

Section

37-66-101. Short title.
37-66-102. Purpose.
37-66-103. Definitions.
37-66-104. Acts declared unlawful.
37-66-105. Exemptions.

Part 2 — Board of Landscape Architects

37-66-201. Organization — compensation.
37-66-202. Rulemaking power.

Part 3 — Licensing

37-66-301. License required.
37-66-302. Illegal use of title.
37-66-303. Licensing restricted to individuals — partnerships — local business licensing.

37-66-304. Qualifications not required.
37-66-305. Examinations.
37-66-306. Reciprocity.
37-66-307. Annual renewal — withdrawal — deposit of fees.
37-66-308. Display of license — seal of landscape architect.
Sections 37-66-309 through 37-66-320 reserved.
37-66-321. Revocation or suspension of license — grounds — reinstatement.
37-66-322. Penalty.
37-66-323. Prosecution.

Part 1

General

37-66-101. Short title. This chapter shall be known and cited as the "Landscape Architecture Registration and Licensing Act".

History: En. 66-3801 by Sec. 1, Ch. 476, L. 1975; R.C.M. 1947, 66-3801; amd. Sec. 4, Ch. 325, L. 1979.

37-66-102. Purpose. The purpose of this chapter is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476, L. 1975; R.C.M. 1947, 66-3802.

37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1652.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.

History: En. 66-3803 by Sec. 3, Ch. 476, L. 1975; R.C.M. 1947, 66-3803; amd. Sec. 24, Ch. 22, L. 1979; amd. Sec. 5, Ch. 325, L. 1979.

37-66-104. Acts declared unlawful. It shall be unlawful for any person to:

(1) offer to practice or hold himself out as entitled to practice landscape architecture unless duly licensed and registered under this chapter;

(2) present as his own the license of another;

(3) give false or forged evidence to the board or any member thereof in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(1).

37-66-105. Exemptions. (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and land surveyors licensed to practice their respective professions.

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

(5) None of the provisions of this chapter shall require the hiring of a landscape architect.

History: En. 66-3808 by Sec. 10, Ch. 476, L. 1975; R.C.M. 1947, 66-3808.

Part 2

Board of Landscape Architects

37-66-201. Organization — compensation. (1) At its first meeting of every calendar year, the board shall elect from among its public representative members a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) In carrying out the provisions of this chapter, the only reimbursement members of the board may receive is for travel expenses, as allowed in 2-18-501 through 2-18-503, as amended, incurred in the performance of board duties.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(5); amd. Sec. 6, Ch. 325, L. 1979.

37-66-202. Rulemaking power. The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this chapter.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(4).

Part 3

Licensing

37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this chapter.

History: En. 66-3804 by Sec. 4, Ch. 476, L. 1975; R.C.M. 1947, 66-3804.

37-66-302. Illegal use of title. No person may use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that he is a landscape architect or practicing landscape architecture unless such person is a landscape architect licensed with the board.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).

37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but nothing contained in this chapter prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977; R.C.M. 1947, 66-3809.

37-66-304. Qualifications not required. Each applicant must be admitted to the examination without prerequisite qualifications.

History: En. 66-3805 by Sec. 5, Ch. 476, L. 1975; R.C.M. 1947, 66-3805; amd. Sec. 7, Ch. 325, L. 1979.

37-66-305. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect is required to establish by examination his competency to practice the profession of landscape architecture.

(3) The examination given must be the uniform national examination prescribed by the council of landscape architectural boards.

History: En. 66-3806 by Sec. 6, Ch. 476, L. 1975; R.C.M. 1947, 66-3806; amd. Sec. 8, Ch. 325, L. 1979.

37-66-306. Reciprocity. The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country and who is certified by the council of landscape architectural registration boards.

History: **En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(4); amd. Sec. 9, Ch. 325, L. 1979.**

37-66-307. Annual renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter shall be deposited in an earmarked revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the chapter, subject to 37-1-101(6).

History: **En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(1) thru (3); amd. Sec. 10, Ch. 325, L. 1979.**

Compiler's Comments

Grandfather clause. Sec. 11, Ch. 325, L. 1979, provided: "The board shall issue a license without oral or written examination to any person who was practicing landscape architecture on the effective date of the act originally creating the board (July 1, 1975). However, if a person practicing landscape architecture on the effective date of the act originally creating the board was denied licensure because of requirements which are deleted by [this act], then such person shall be licensed without oral or written examination under the provisions of [this act]."

37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and such other words or figures as the board considers necessary. All drawings and title pages of specifications prepared by such landscape architect or under the supervision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed land surveyor.

History: **En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).**

37-66-309 through 37-66-320 reserved.

37-66-321. Revocation or suspension of license — grounds — reinstatement. (1) The board may revoke or suspend the license of any landscape architect upon the following grounds:

(a) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this chapter;

(b) conviction of a felony by a court of competent jurisdiction. However, the right to a revoked or suspended license is regained upon termination of state supervision over the licensee.

(c) gross incompetency;

(d) fraud or deceit in the performance of official duties;

(e) willful violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter.

(2) The board may reinstate any revoked or suspended certification upon such terms as it may impose.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975; R.C.M. 1947, 66-3811.

37-66-322. Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed $500. Each violation is considered a separate offense for purposes of this section.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(2).

37-66-323. Prosecution. All violations of this chapter, when reported to the board and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by it. If the allegation is found to be true, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

History: En. 66-3813 by Sec. 15, Ch. 476, L. 1975; R.C.M. 1947, 66-3813.

CHAPTER 67

ENGINEERS AND LAND SURVEYORS

Part 1 — General

Section

37-67-101. Definitions.
37-67-102. Representation as practitioner to be construed as practice.
37-67-103. Exemptions.

Part 2 — Board of Professional Engineers and Land Surveyors

37-67-201. Organization — meetings — quorum — seal.
37-67-202. Rulemaking and subpoena power.
37-67-203. Compensation of board members — expenses.
37-67-204. Record of proceedings — register of applicants.

Part 3 — Licensing

37-67-301. License required to practice or offer to practice.
37-67-302. Practice without a license a public nuisance.
37-67-303. Application — contents — fees.
37-67-304. Municipality may not impose fee.
37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training.
37-67-306. Qualifications of applicant for registration as professional engineer.
37-67-307. Qualifications of applicant for registration as engineer-in-training.
37-67-308. General qualifications of applicants for registration as land surveyor or land surveyor-in-training.
37-67-309. Qualifications of applicant for registration as land surveyor.
37-67-310. Qualifications of applicant for registration as land surveyor-in-training.

37-67-311. Examinations.
37-67-312. Licensure of professional engineers without examination by comity or endorsement.
37-67-313. Comity consideration for land surveyors from other states.
37-67-314. Issuance of certificates — seal of engineer or land surveyor — enrollment card for trainees.
37-67-315. Annual renewal — fee — verification of competency.
37-67-316. Replacement of lost or destroyed certificate.
37-67-317. Deposit of moneys collected.
37-67-318. Roster of licensees to be published by department.
37-67-319. Temporary permits for nonresident practitioners.
Sections 37-67-320 through 37-67-330 reserved.
37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement.
37-67-332. Violations — penalties — enforcement.

Part 1

General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and land surveyors provided for in 2-15-1653.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Land surveyor" means a person who has been duly registered and licensed as a land surveyor by the board and is a professional specialist in the technique of measuring land, educated in the basic principles of mathematics, related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisites to the surveying of real property and is engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(6) "Practice of engineering" means any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion

of any engineering services. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the adequate performance of which requires the application of knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, and elevations;

(d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(8) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been duly registered and licensed as a professional engineer by the board.

(9) "Responsible charge" means direct control and personal supervision either of engineering work or of land surveying, as the case may be. Only professional engineers or land surveyors may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979.

37-67-102. Representation as practitioner to be construed as practice. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is registered under this chapter or who holds himself out as able to perform or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying, within the meaning and intent of this chapter, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a land surveyor or through the use of some other title implies that he is a land surveyor or who represents himself as able to perform or who does perform any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369.

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) the work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under this chapter, provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture;

(5) the practice of professional engineering or land surveying in this state by a firm, partnership, corporation, or joint-stock association or by its members, officers, or employees on its behalf, if each person personally supervising and in direct charge of all activities of the firm, partnership, corporation, or joint-stock association which constitutes the practice is a professional engineer or land surveyor holding a certificate of registration under this chapter.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367.

Part 2

Board of Professional Engineers and Land Surveyors

37-67-201. Organization — meetings — quorum — seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than five members.

(4) The board shall adopt and have an official seal.

History: (1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M. 1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979.

37-67-202. Rulemaking and subpoena power. (1) The board shall have the power to adopt and amend all rules, including rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

(2) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the

board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person requiring his attendance before such authority and there to testify or to produce such books, papers, and documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

37-67-203. Compensation of board members — expenses. Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed $25 per day. In addition thereto, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, involved in carrying out the provisions of this chapter.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351.

37-67-204. Record of proceedings — register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for registration, which shall show:

(a) the name, age, and residence of each applicant;
(b) the date of the application;
(c) the place of business of the applicant;
(d) his educational and other qualifications;
(e) the branch or branches of engineering in which the applicant qualified;
(f) whether an examination was required;
(g) whether the applicant was rejected;
(h) whether a certificate of registration was granted;
(i) the date of the action of the board; and
(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355.

Part 3

Licensing

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. From and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as defined in this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor unless such person has been duly registered under the provisions of this chapter.

History: En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349.

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is as prescribed by the board but may not exceed $30, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board but may not exceed $40 for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board but may not exceed $50, which includes cost of transfer of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on application and payment of a fee as prescribed by the board but not to exceed $60, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board but may not exceed $30, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a land surveyor is as prescribed by the board but may not exceed $40 for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land

surveyor-in-training certificate from some other state, the application fee is as prescribed by the board but may not exceed $50, which includes cost of transfer of the certification. No additional fee is required for issuance of a certificate. Upon approval of application for registration as a land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is as prescribed by the board but may not exceed $60 for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board but may not exceed $100. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979.

Compiler's Comments

Effective date. Sec. 10, Ch. 408, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

Statement of intent. The statement of intent attached to SB 422 (Ch. 408, L. 1979) provided in part: "Section 6 gives the board the authority to adopt fees not to exceed the various amounts listed. It is intended that the fees will not exceed amounts necessary to meet administrative costs." SB 422 was amended so that section 6 became section 5.

37-67-304. Municipality may not impose fee. No registration or license fee or tax may be imposed by a municipality or by any other political subdivision of the state on a person registered under this chapter.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9).

37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training. To be eligible for admission to examination for professional engineer or engineer-in-training, an applicant must be of good character and reputation. The applicant must submit five references with his application for registration as a professional engineer; three references shall be professional engineers with personal knowledge of his engineering experience. In the case of an application for certification as an engineer-in-training, the applicant must submit three character references.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).

37-67-306. Qualifications of applicant for registration as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an

additional 4 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, shall be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(2) A graduate of an engineering or related science curriculum of 4 years or more, other than the ones approved by the board as being of satisfactory standing, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character which indicate to the board that the applicant may be competent to practice engineering shall be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(4) Engineering teaching in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).

37-67-307. Qualifications of applicant for registration as engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(1) A graduate of an engineering curriculum of 4 years or more, approved by the board as being of satisfactory standing, shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(2) A graduate of an engineering or related science curriculum of 4 years or more, other than the ones approved by the board as being satisfactory standing, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b).

37-67-308. General qualifications of applicants for registration as land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a land surveyor, three of which references shall be registered land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects of which he has been in charge, recommendations by references, and a reviewing of these categories. An interview may be held at the board's discretion. Educational credit for institute courses, correspondence courses, etc., shall be determined by the board.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).**

37-67-309. Qualifications of applicant for registration as land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor:

(1) have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying with a minimum of 3 years of experience in charge of land surveying projects under the supervision of a registered land surveyor and have passed the examinations as required by the board;

(2) have 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours passed, or equivalent semester hours, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying with a minimum of 4 years of experience in charge of land surveying projects under the supervision of a registered land surveyor and have passed the examinations as required by the board.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).**

37-67-310. Qualifications of applicant for registration as land surveyor-in-training. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

(1) Have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that he has had, in addition thereto, at least 2 years of combined office and field experience in land surveying with a minimum of 1 year in charge of land surveying projects under the supervision of a land surveyor and have passed the written examinations required by the board.

(2) Have at least 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours or equivalent semester hours passed or the equivalent approved by the board and present

evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying with a minimum of 2 years in charge of land surveying projects under the supervision of a land surveyor and have passed the written examinations required by the board.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b).**

37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate provided he has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer provided he has met the other requirements for registration required by this chapter.

(c) The examinations for land surveyor-in-training consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for land surveyor consist of being a land surveyor-in-training and of two 4-hour examinations, designated as parts III and IV, on the applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration as a land surveyor provided he has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify.

History: **En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359.**

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provision of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be registered without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of engineering

examiners, whose qualifications meet the requirements of this chapter, may upon application be registered without further examination.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i).

37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration or comparable qualifications to engage in the practice of land surveying issued from a state, territory, or possession of the United States will be given comity consideration. However, he may be asked to take such examinations as the board deems necessary to determine his qualifications; but in any event, he shall be required to pass a written examination of not less than 8-hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii).

37-67-314. Issuance of certificates — seal of engineer or land surveyor — enrollment card for trainees. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation "professional engineer" and for a land surveyor, "land surveyor". It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend "professional engineer" and/or "land surveyor". Plans, specifications, plats, and reports prepared by a registrant shall when issued be certified, signed, and stamped with the seal or facsimile thereof. It shall be unlawful for a registrant to affix or permit his seal and signature or facsimile thereof to be affixed to any plans, specifications, plats, or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this chapter.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as engineer-in-training or land surveyor-in-training which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or land surveyor.

History: En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360.

37-67-315. Annual renewal — fee — verification of competency. (1) Certificates of registration expire on December 31 of the appropriate year and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December of the appropriate year by the payment of a fee, not to exceed $60 biennially, as set by the board for either a professional engineer or land surveyor, or both.

(2) No certificate may be renewed unless the registrant submits a verified statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially in the month of December of the appropriate year does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional renewal period shall be considered a new applicant and is required to submit a new application.

History: En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947, 66-2361; amd. Sec. 6, Ch. 408, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 422 (Ch. 408, L. 1979) provided in part: "Section 7 gives the board the authority to adopt rules that define the maintenance of competency. The rules shall provide that competency may be evidenced by either continued active practice or other activities.

As regards the continued practice alternative the rules should prescribe the number of hours of practice required during the 2 year renewal period and should define the types of activities which constitute active practice.

As regards the "other activities" alternative the following areas should be addressed:

(a) types of activities that will fulfill the requirements, including but not limited to classroom instruction, seminars, examinations, intrafirm or intracompany group study programs, or home study;

(b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, and course content;

(c) the basic content and the procedure and passing grade for examinations, if any, required; and

(d) methods of monitoring compliance." SB 422 was amended so that section 7 became section 6.

37-67-316. Replacement of lost or destroyed certificate. A new certificate of registration to replace a certificate revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part).

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354.

37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered land surveyors shall be published by the department. Copies of this roster shall be mailed to each person registered. Copies shall also be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to the public on request at a fee established by the board.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979.

Compiler's Comments

Effective date. Sec. 10, Ch. 408, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

37-67-319. Temporary permits for nonresident practitioners. Temporary permits are governed by the following:

(1) Such a permit may be granted for the practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this chapter. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, such person may be granted a written permit for a definite period of time not to exceed 1 year to do a specific job; provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in the permit.

(2) The practice of land surveying under a temporary permit by a person registered as a land surveyor in another state is not considered to be in the best interests of the public and, therefore, may not be granted.

History: En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979.

37-67-320 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and land surveyors adopted by the board;

(e) if a land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which

the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or revoke, suspend, or refuse to renew.

(4) If, after hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979.

Compiler's Comments

Effective date. Sec. 10, Ch. 408, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

37-67-332. Violations — penalties — enforcement. (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this chapter or a person presenting or attempting to use as his own the certificate of registration or the seal of another or a person who gives false or forged evidence to the board or department in obtaining a certificate of registration or a person who falsely impersonates another registrant or a person who attempts to use an expired or revoked certificate of registration or a person who violates this chapter is guilty of a misdemeanor and shall on conviction be fined not less than $100 or more than $500 or imprisoned for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or a political subdivision thereof shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366.

CHAPTER 68

ELECTRICIANS AND ELECTRICAL SAFETY

Part 1 — General

Section

37-68-101. Purpose.
37-68-102. Definitions.
37-68-103. Exemptions.

Part 2 — State Electrical Board

37-68-201. Organization — meetings — quorum — rulemaking power — seal.

37-68-202. Compensation and expenses of board members.

Part 3 — Licensing

37-68-301. License required to engage in electrical work.
37-68-302. Unauthorized use of title.
37-68-303. Apprentice may work under licensed electrician — record of apprentices.
37-68-304. Master electricians — application — qualifications — contents of examination.
37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination.
37-68-306. Temporary permits pending examination.
37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.
37-68-308. Licensure without examination of persons licensed locally.
37-68-309. Electricians licensed by other states — reciprocity.
37-68-310. Annual renewal.
37-68-311. Examination fee — annual fee — specific exemption for apprentices.
37-68-312. Electrical contractor's license — application — issuance — fees — renewal.
37-68-313. Reasonable fees — deposit of money collected.
Sections 37-68-314 through 37-68-320 reserved.
37-68-321. Suspension or revocation of license.
37-68-322. Penalty.

Part 1

General

37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

37-68-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1654.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work.

History: En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974; R.C.M. 1947, 66-2803; amd. Sec. 4, Ch. 546, L. 1979.

37-68-103. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812; amd. Sec. 5, Ch. 546, L. 1979.

Part 2

State Electrical Board

37-68-201. Organization — meetings — quorum — rulemaking power — seal. (1) Each July the board shall elect from its membership a president, vice-president, and secretary-treasurer.

(2) The board shall meet quarterly and at such other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter and for the licensing of electrical contractors and the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter.

History: (1), (2), (4)En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; R.C.M. 1947, 66-2805(1), (2)(a) thru (2)(c), 82A-1602.10(5).

Compiler's Comments

Statement of intent. The statement of intent attached to SB 390 (Ch. 546, L. 1979) provided in part: "Section 3 defines and, together with other sections, provides for regulation of a new classification of license, the residential electrician's license. Rules relating to the residential license should cover all areas now covered by board rules for journeyman and master electricians. The rules should set forth the basic content and the procedures and passing examination for the residential license. The examination should be tailored to meet the requirements for work as a residential electrician.

When appropriate and in conformance with law, the board may amend existing rules to make them applicable to the residential license."

"Section 3" appears to refer to 37-68-103, as amended by Chapter 546. Section 37-68-201 was not amended by Chapter 546.

37-68-202. Compensation and expenses of board members. Each member of the board shall receive $25 per day for each day served in the discharge of his duties, together with travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties.

History: Ap. p. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; Ap. p. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; R.C.M. 1947, 66-2805(3), 82A-1602.10(4).

Part 3

Licensing

37-68-301. License required to engage in electrical work. A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until he has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979.

Compiler's Comments

Effective date. Sec. 18, Ch. 546, L. 1979, provided: "This act is effective on passage and approval." Approved April 12, 1979.

37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, or residential electrician unless qualified and licensed under this chapter.

History: En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979.

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules made by the board. The name and residence of each apprentice and the name and residence of his employer shall be filed with the department, and a record shall be kept by the department showing the name and residence of each apprentice.

History: En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817.

37-68-304. Master electricians — application — qualifications — contents of examination. (1) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated by the board, and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The written examination shall consist of at least 30 questions designed to fairly test the applicant's knowledge and his technical application in the following subjects:

(a) the national electrical code;

(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading of blueprints for electrical work;

(e) drafting and layout of electrical circuits;

(f) knowledge of practical electrical theory.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(1).

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses. The written examination for a journeyman's license shall consist of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;
(b) the national electrical code;
(c) layout and practical installation of electrical circuits.

(2) An applicant for a residential electrician's license shall furnish written evidence that he has had at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant is made and given as in the case of master electricians' licenses. The written examination for a residential electrician's license consists of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;
(b) the national electrical code;
(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(2); amd. Sec. 8, Ch. 546, L. 1979.

37-68-306. Temporary permits pending examination. The board may authorize the department to issue a temporary permit to engage in the work of a master electrician, journeyman electrician, or residential electrician to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. A temporary permit continues in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974; R.C.M. 1947, 66-2810; amd. Sec. 9, Ch. 546, L. 1979.

37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration. (1) To insure impartiality, the examination for either the master's or journeyman's license shall be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but shall be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license which authorizes him to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) Each original license expires on the July 15 which is at least 1 year but not more than 2 years subsequent to the date of issuance.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(3); amd. Sec. 10, Ch. 546, L. 1979.

37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, or residential electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974; R.C.M. 1947, 66-2811; amd. Sec. 11, Ch. 546, L. 1979.

37-68-309. Electricians licensed by other states — reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the board may grant licenses to electricians licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974; R.C.M. 1947, 66-2809.

37-68-310. Annual renewal. Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of 1 year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee of $5 shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(4); amd. Sec. 12, Ch. 546, L. 1979.

37-68-311. Examination fee — annual fee — specific exemption for apprentices. (1) Master electricians who are not electrical contractors and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application shall be on a form furnished by the department and accompanied by an examination fee set by the board. The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, he shall pay to the department an annual license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

History: En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974; R.C.M. 1947, 66-2815; amd. Sec. 13, Ch. 546, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 390 (Ch 546, L. 1979) provided in part: "Sections 13 and 14 give the board authority to prescribe various fees. This must be done by rule. It is intended that each fee not exceed the amount necessary to meet the cost of administering the program to which it relates."

37-68-312. Electrical contractor's license — application — issuance — fees — renewal. Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee set by the board for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this chapter is entitled to have his license renewed for the ensuing year by payment to the department of the license fee before the date of expiration of the license.

History: En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974; R.C.M. 1947, 66-2814; amd. Sec. 14, Ch. 546, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 390 (Ch 546, L. 1979) provided in part: "Sections 13 and 14 give the board authority to prescribe various fees. This must be done by rule. It is intended that each fee not exceed the amount necessary to meet the cost of administering the program to which it relates."

37-68-313. Reasonable fees — deposit of money collected. All fees established by the board under this chapter must be reasonably related to the respective program costs. Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board.

History: En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974; R.C.M. 1947, 66-2819; amd. Sec. 15, Ch. 546, L. 1979.

37-68-314 through 37-68-320 reserved.

37-68-321. Suspension or revocation of license. The board may suspend or revoke a license granted under this chapter for any of the following reasons:

(1) violation of this chapter, the national electrical code, or the rules of the board;

(2) any cause for which issuance of the license could have been denied had it existed and been known to the board;

(3) commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master, journeyman, or residential electrician or the business of an electrical contractor; or

(4) making a material misstatement, misrepresentation, or fraud in obtaining a license.

History: En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; R.C.M. 1947, 66-2805(2)(d); amd. Sec. 16, Ch. 546, L. 1979.

37-68-322. Penalty. (1) Any person or corporation violating any provision of this chapter shall upon conviction thereof:

(a) if a person, be punished by a fine not more than $500 or by imprisonment for a term not to exceed 6 months or by revocation of his license or by such fine, imprisonment, and revocation, in the discretion of the court; and

(b) if a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who shall personally participate in or be accessory to any violation of this chapter by such partnership, association, corporation shall be subject to the penalties herein prescribed for individuals.

History: **En. Sec. 20, Ch. 148, L. 1965; R.C.M. 1947, 66-2820.**

CHAPTER 69

PLUMBERS

Part 1 — General

Section

37-69-101. Definitions.
37-69-102. Exceptions.
37-69-103. No penalty for hiring unlicensed plumber.

Part 2 — Board of Plumbers

37-69-201. Chairman — quorum.
37-69-202. Rulemaking power — records.
37-69-203. Compensation of board members — expenses.

Part 3 — Licensing

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available.
37-69-302. Apprenticeship allowed.
37-69-303. Application — contents — requirements.
37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority.
37-69-305. Qualifications of applicants for master plumber's license — restriction on authority.
37-69-306. Examination — issuance of license.
37-69-307. Examination fee and annual renewal fee.
37-69-308. Deposit of fees.
Sections 37-69-309 through 37-69-320 reserved.
37-69-321. Revocation or suspension of license — grounds.
37-69-322. Revocation or suspension of license — procedure.
37-69-323. Restrictions on and responsibility for employees of master plumber.
37-69-324. Penalty.

Part 1

General

37-69-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1655.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises and includes potable water piping, water heaters, and vents for the premises.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975; R.C.M. 1947, 66-2401.1; amd. Sec. 4, Ch. 549, L. 1979.

37-69-102. Exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) where an owner of a single-family residence used exclusively for his personal use makes the installation himself for all sanitary plumbing and potable water supply piping or where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in farms or ranches having their own private water supply and sewage disposal systems;

(d) in cities and towns extending their own city water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer.

(2) This chapter shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: (1)En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; Sec. 66-2401, R.C.M. 1947; (2)En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; Sec. 66-2426, R.C.M. 1947; R.C.M. 1947, 66-2401(2), 66-2426.

37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing any penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who himself engages in the field of plumbing at a time when he is not duly licensed is subject to the penalties imposed by this chapter.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415; amd. Sec. 27, Ch. 22, L. 1979.

Part 2

Board of Plumbers

37-69-201. Chairman — quorum. (1) The board shall annually select a chairman from its members.

(2) A majority of the board constitutes a quorum.

History: (1)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; (2)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; R.C.M. 1947, 66-2409(1), 66-2414(part).

37-69-202. Rulemaking power — records. (1) The board may adopt rules necessary to carry out this chapter.

(2) The board shall adopt rules for the transaction of its business, and the department shall keep a record of the board's official actions.

History: (1)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; (2)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; R.C.M. 1947, 66-2409(2), 66-2414(part).

37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation of $20 for each day while actually engaged in the work of the board and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; R.C.M. 1947, 66-2403(1).

Part 3

Licensing

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available. Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice to the board of plumbers and upon their approval, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available.

History: En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; R.C.M. 1947, 66-2401(1).

37-69-302. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the department of labor and industry will be recognized by the department. The name and residence of each apprentice and the names and residences of their employers shall be filed with the department, and a record shall be kept by the department.

History: En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975; R.C.M. 1947, 66-2406.

37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience and shall at a time and place designated by the board be examined as to his qualifications for a license.

History: En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; R.C.M. 1947, 66-2404(part).

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority. (1) The following requirements shall be met by applicants for a journeyman plumber's license:

(a) a specific record of 4 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 4 years in a major phase of the plumbing business or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(2), (3).

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements shall be met by an applicant for a master plumbers' license:

(a) evidence of 4 years' experience as a journeyman plumber in the field of plumbing of a character satisfactory to the board;

(b) evidence of 3 years' experience in supervisory capacities in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a);

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(2) A master plumber shall not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license.

History: (1), (2)En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; Sec. 66-2402, R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2402(part), 66-2404(part); amd. Sec. 5, Ch. 549, L. 1979.

37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant, upon successfully passing the examination prescribed by the board, shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. No individual, firm, or corporation may do the work of a master plumber unless licensed under this chapter.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; Sec. 66-2403, R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2403(2), 66-2404(part).

37-69-307. Examination fee and annual renewal fee. (1) No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department an examination fee prescribed by the board, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires 1 year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee

as set by the board for renewal of a journeyman plumber's license. Renewal is for the period of 1 year.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977; R.C.M. 1947, 66-2405; amd. Sec. 6, Ch. 549, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 458 (Ch. 549, L. 1979) provided: "Section 6 allows the board to prescribe examination and renewal fees. This must be done by rule. It is intended that an examination fee will not exceed the cost of administering the examination for which it is paid, and that a renewal fee will not exceed other administrative costs."

37-69-308. Deposit of fees. Money paid for license fees under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974; R.C.M. 1947, 66-2407.

37-69-309 through 37-69-320 reserved.

37-69-321. Revocation or suspension of license — grounds. (1) The license and permit granted as herein provided may be at any time revoked for incompetency, dereliction of duty, or other sufficient cause after a full and fair hearing by said board.

(2) Any person, firm, or corporation licensed under the provisions of this chapter who performs plumbing work in the field of plumbing below the minimum basic standards for plumbing as set forth in the state plumbing code is subject to having his or its license revoked or suspended by the board.

History: (1)En. Sec. 8, Ch. 203, L. 1949; Sec. 66-2408, R.C.M. 1947; (2)En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975; Sec. 66-2419, R.C.M. 1947; R.C.M. 1947, 66-2408, 66-2419.

37-69-322. Revocation or suspension of license — procedure. (1) Proceedings for the revocation or suspension of a journeyman or master plumber's license may be taken by the board on its motion for matters in its knowledge or may be taken on the information of another. Accusations must be in writing and verified by a party familiar with the facts charged.

(2) On receiving the accusation, the board shall, if it considers the accusation sufficient, make an order setting it for hearing and requiring the accused to appear and answer the charge or accusation at the hearing.

(3) If the accused does not appear, the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge or if on the hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period.

History: (1), (2)En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975; Sec. 66-2420, R.C.M. 1947; (3)En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974; Sec. 66-2422, R.C.M. 1947; R.C.M. 1947, 66-2420, 66-2422.

37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(part).

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this chapter shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411.

CHAPTER 70

HEATING, VENTILATION, AIR CONDITIONING

Part 1 — General

Section

37-70-101. Short title.
37-70-102. Purpose.
37-70-103. Definitions.
37-70-104. Exemptions.

Part 2 — Board of Warm Air Heating, Ventilation, and Air Conditioning

37-70-201. Meetings — quorum.
37-70-202. Powers and duties.
37-70-203. Compensation and expenses.

Part 3 — Licensing

37-70-301. License and permit required.
37-70-302. Qualifications of applicants — master — journeyman — apprentice.
37-70-303. Examination.
37-70-304. Fees.
37-70-305. Deposit of fees.
37-70-306. Display of license — nontransferability.
Sections 37-70-307 through 37-70-310 reserved.
37-70-311. Revocation or suspension of license.
37-70-312. Penalty.

Part 1

General

37-70-101. Short title. This chapter is to be known and referred to as the "Heating, Ventilation, and Air Conditioning Act".

History: En. 66-3501 by Sec. 2, Ch. 504, L. 1975; R.C.M. 1947, 66-3501.

37-70-102. Purpose. It is hereby declared to be the purpose of this chapter to protect the people of Montana from health, life, financial, and other hazards resulting from irresponsible service methods, unethical practices, inferior installation, maintenance, and repair of warm air heating, ventilation, and air conditioning systems and equipment.

History: En. 66-3502 by Sec. 3, Ch. 504, L. 1975; R.C.M. 1947, 66-3502.

37-70-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means board of warm air heating, ventilation, and air conditioning provided for in 2-15-1656.

(2) "Department" means the department of professional and occupational licensing.

(3) (a) "Warm air heating, ventilation, and air conditioning work" means construction, installation, alteration, maintenance, and repair of:

(i) all warm air heating systems, complete with warm air appliances, ducts, registers, and flues, with or without air filters or humidity and thermostatic controls;

(ii) ventilating systems, complete with blowers, ducts, plenum chambers, registers, with or without air filters, humidity and thermostatic controls;

(iii) air conditioning systems, complete with air conditioning units, ducts, registers, air filters, humidity and thermostatic controls;

(iv) all equipment for air heating, ventilating, and air conditioning;

(v) blower and exhaust appliances and systems; and

(vi) domestic and commercial forced air heating equipment.

(b) Warm air heating, ventilation, and air conditioning work does not include any portable heating, ventilating, or air conditioning equipment which does not become affixed to real property and masonry fireplaces and component parts with masonry flues.

History: En. 66-3503 by Sec. 4, Ch. 504, L. 1975; R.C.M. 1947, 66-3503.

37-70-104. Exemptions. The provisions of this chapter do not apply or affect work done:

(1) by a homeowner on either his family dwelling or outbuildings or both of them or person doing routine maintenance in his place of business or rental housing;

(2) to provide fuel or refrigeration pipelines when lines are connected to the installation of heating, ventilating, and air conditioning systems; or

(3) by railroads, smelters, underground mining operations, mills, or refineries on their properties by self or employees or other businesses doing their own routine maintenance.

History: En. 66-3515 by Sec. 16, Ch. 504, L. 1975; R.C.M. 1947, 66-3515.

Part 2

Board of Warm Air Heating, Ventilation, and Air Conditioning

37-70-201. Meetings — quorum. (1) The board shall meet at least semiannually.

(2) A majority of the members of the board constitutes a quorum necessary for the transaction of business.

History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(5), (6).

37-70-202. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by law, the board shall have and exercise the following powers and duties:

(1) to promulgate rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to hear contested cases coming under the provisions of this chapter; and

(3) to establish how permit fees are to be collected and allocated under applicable state and local building codes.

History: En. 66-3504 by Sec. 5, Ch. 504, L. 1975; R.C.M. 1947, 66-3504.

37-70-203. Compensation and expenses. Each member of the board is entitled to $25 per day for each day served discharging his board duties, together with a per diem and mileage expense allowance pursuant to 2-18-501 through 2-18-503. No member of the board may be allowed compensation in addition to his present compensation from the state.

History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(4); amd. Sec. 28, Ch. 22, L. 1979.

Part 3

Licensing

37-70-301. License and permit required. It shall be unlawful:

(1) for any person or firm to perform or to establish a place of business to perform or to advertise for warm air heating, ventilation, or air conditioning work for another unless such person or a full partner or 10% or more shareholder of such firm shall have first obtained a master license hereunder, provided, that any person who is licensed as a journeyman may perform such work for a master licensee or a firm with which a master licensee is associated; and

(2) for equipment to be installed in this state unless evidence of permit fee payment is attached in the manner prescribed by the board.

History: En. 66-3513 by Sec. 14, Ch. 504, L. 1975; R.C.M. 1947, 66-3513.

37-70-302. Qualifications of applicants — master — journeyman — apprentice. (1) The following requirements shall be met by applicants for a state license:

(a) masters shall furnish evidence of 5 years' experience in warm air heating, ventilation, and air conditioning work satisfactory to the board;

(b) journeyman mechanics shall furnish evidence of 4 years' experience in warm air heating, ventilation, and air conditioning work which is satisfactory to the board. This experience requirement may be fulfilled by working 4 years in any major phase of the warm air heating, ventilation, and air conditioning business or by completing an apprenticeship program meeting the standards set by the state apprenticeship council or United States department of labor, bureau of apprenticeship, and credit toward this experience requirement shall be given for time spent in attending trade or other schools specializing in training in the warm air heating, ventilation, and air conditioning business and approved by the board.

(c) for apprentice mechanics:

(i) registration by the board and the Montana apprenticeship council as an apprentice;

(ii) working under the direct and personal supervision of a duly licensed journeyman, learning the business of warm air heating, ventilation, and air conditioning.

(2) Apprentices qualifying hereunder shall be issued apprentice permits by the board.

History: **En. 66-3508 by Sec. 9, Ch. 504, L. 1975; R.C.M. 1947, 66-3508.**

37-70-303. Examination. An applicant for a license to engage in warm air heating, ventilation, or air conditioning work shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his qualifications and fitness for carrying on warm air heating, ventilation, or air conditioning work as a master or journeyman. If the applicant successfully passes the examination prescribed by the board, a license shall be issued to the applicant authorizing him to engage in warm air heating, ventilation, or air conditioning work as a master or journeyman in the state, subject to other provisions of this chapter.

History: **En. 66-3506 by Sec. 7, Ch. 504, L. 1975; R.C.M. 1947, 66-3506.**

37-70-304. Fees. (1) Each applicant for a master's license shall pay a $75 application fee, and each applicant for a journeyman's license shall pay a $35 application fee.

(2) All licenses and renewals expire on July 1 of each year. Renewal fees shall be set annually by the board and may not exceed the application fees.

(3) Examination fees shall be set by the board but not to exceed $50 for a master's examination and $25 for a journeyman's examination.

History: **En. 66-3509 by Sec. 10, Ch. 504, L. 1975; R.C.M. 1947, 66-3509.**

37-70-305. Deposit of fees. Money paid for license and equipment fees under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977; R.C.M. 1947, 66-3505.**

37-70-306. Display of license — nontransferability. The board shall issue a license of a design approved by the board to each licensee. A person licensed shall display the license in plain view in his place of business, and if he is performing services away from his place of business, he shall present identification issued by the board showing his license number. Licenses are not transferable.

History: **En. 66-3511 by Sec. 12, Ch. 504, L. 1975; R.C.M. 1947, 66-3511.**

37-70-307 through 37-70-310 reserved.

37-70-311. Revocation or suspension of license. (1) Any licensee who performs or any master licensee whose associated firm performs warm air heating, ventilation, and air conditioning work in any building whatsoever below the standards set by the applicable warm air heating, ventilation, and air conditioning code may have his license revoked or suspended by the board.

(2) Proceedings for the revocation or suspension of a license may be commenced by the board upon its own motion or upon motion of any person. All complaints must be in writing, verified, and filed with the department. The board may deem the complaint sufficient as received or require further investigation. When a complaint is deemed sufficient by the board, it shall provide for a hearing at a specified time and place, and the department shall cause a true copy of notice of hearing and of the complaint to be served upon the licensee at least 10 days before the day appointed in the order for hearing.

History: **En. 66-3512 by Sec. 13, Ch. 504, L. 1975; R.C.M. 1947, 66-3512.**

37-70-312. Penalty. Any person or firm convicted of violating the provisions of 37-70-301 shall be fined not less than $20 and not more than $500 for each separate offense.

History: **En. 66-3514 by Sec. 15, Ch. 504, L. 1975; R.C.M. 1947, 66-3514(part).**

TITLE 38

RESERVED

TITLE 39

LABOR

Ch.
1. Department of Labor and Industry.
2. The Employment Relationship.
3. Wages and Wage Protection.
4. Hours of Labor in Certain Employments.
5. The Employment Agency Act.
6. Apprenticeship.
7. Women in Employment.
Chapters 8 through 30 reserved.
31. Collective Bargaining for Public Employees.
32. Collective Bargaining for Nurses.
33. General Limitations on Collective Bargaining Rights.
34. Arbitration for Firefighters.
Chapters 35 through 50 reserved.
51. Unemployment Insurance.
Chapters 52 through 70 reserved.
71. Workers' Compensation.
72. Occupational Disease Act of Montana.
73. Silicosis Benefits.

CHAPTER 1

DEPARTMENT OF LABOR AND INDUSTRY

Part 1 — General Provisions

Section
39-1-101. Definitions.
39-1-102. Duties of department.
39-1-103. Powers of department.
39-1-104. Cooperation with federal government.

Part 1

General Provisions

39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

History: **En. 39-1-101 by Sec. 1, Ch. 397, L. 1979.**

39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor which regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(1); amd. Sec. 2, Ch. 397, L. 1979.

39-1-103. Powers of department. (1) In discharging the duties imposed upon the department of labor and industry, the commissioner of labor and industry or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.

(4) Nothing in this chapter applies to labor violations preempted by federal law or regulation.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(2).

39-1-104. Cooperation with federal government. The department of labor and industry may and is hereby authorized to assist and cooperate with the wage and hour division and the children's bureau, U.S. department of labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division or said children's bureau for the reasonable cost of such assistance and cooperation.

History: En. Sec. 1, Ch. 56, L. 1939; R.C.M. 1947, 41-1137.

CHAPTER 2

THE EMPLOYMENT RELATIONSHIP

Part 1 — General Provisions

Section
39-2-101. Employment defined.
39-2-102. What belongs to employer.
39-2-103. Confidential employment.

Part 2 — General Obligations of Employers

39-2-201. Seats for employees.

Part 3 — General Prohibitions on Employers

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment.
39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited.
39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited.
39-2-304. Lie detector tests prohibited — exception.
39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited.
39-2-306. Employment of persons under eighteen as bartenders prohibited.

Part 4 — General Obligations of Employees

39-2-401. Duties of gratuitous employee.
39-2-402. Duties of employee for reward.
39-2-403. Duties of employee for his own benefit.
39-2-404. Employee must obey employer.
39-2-405. Employee must conform to usage.
39-2-406. Degree of skill required.
39-2-407. Duty to account.
39-2-408. Duty of employee regarding items received on account of his employer.
39-2-409. Preference to be given to employer's business.
39-2-410. Responsibility of employee for substitute.
39-2-411. Surviving employee.

Part 5 — Termination of Employment

39-2-501. Termination of employment generally.
39-2-502. Termination by death or incapacity of employer.
39-2-503. Termination at will.
39-2-504. Termination by employer for fault.
39-2-505. Termination by employee for fault.

Part 6 — Master and Servant

39-2-601. Servant defined.
39-2-602. Term of hiring.
39-2-603. Renewal of hiring.
39-2-604. Time of service.
39-2-605. Servant to pay over without demand.
39-2-606. When servant may be discharged.

Part 7 — General Liability Arising From Employment Relationship

39-2-701. Indemnification of employee.
39-2-702. Liability of employee for negligence.
39-2-703. Liability of railway corporation for negligence of fellow servants.
39-2-704. Liability of mining company for negligence of fellow servants.
39-2-705. Contract discharging employer liability for negligence void.

Part 8 — Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge.
39-2-802. Protection of discharged employees.
39-2-803. Blacklisting prohibited.
39-2-804. Violation of part a misdemeanor.

Part 1

General Provisions

39-2-101. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

History: En. Sec. 2650, Civ. C. 1895; re-en. Sec. 5241, Rev. C. 1907; re-en. Sec. 7756, R.C.M. 1921; Cal. Civ. C. Sec. 1965; Field Civ. C. Sec. 1004; re-en. Sec. 7756, R.C.M. 1935; R.C.M. 1947, 41-101.

39-2-102. What belongs to employer. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully or during or after the expiration of the term of his employment.

History: En. Sec. 2680, Civ. C. 1895; re-en. Sec. 5263, Rev. C. 1907; re-en. Sec. 7778, R.C.M. 1921; Cal. Civ. C. Sec. 1985; Field Civ. C. Sec. 1018; re-en. Sec. 7778, R.C.M. 1935; R.C.M. 1947, 41-211.

39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the laws relating to trusts and fiduciary relationships.

History: En. Sec. 2687, Civ. C. 1895; re-en. Sec. 5270, Rev. C. 1907; re-en. Sec. 7785, R.C.M. 1921; Cal. Civ. C. Sec. 1992; Field Civ. C. Sec. 1025; re-en. Sec. 7785, R.C.M. 1935; R.C.M. 1947, 41-218; amd. Sec. 3, Ch. 397, L. 1979.

Part 2

General Obligations of Employers

39-2-201. Seats for employees. (1) Every employer in any manufacturing, mechanical, or mercantile establishment; laundry, hotel, or restaurant; or other establishment employing any person shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(2) Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in this section, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense not less than $50 or more than $200 or be imprisoned in the county jail for a period of not less than 10 or more than 60 days or both such fine and imprisonment.

History: (1)En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R.C.M. 1921; re-en. Sec. 3077, R.C.M. 1935; amd. Sec. 22, Ch. 535, L. 1975; Sec. 41-1119, R.C.M. 1947; (2)En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R.C.M. 1921; re-en. Sec. 3078, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1971; Sec. 41-1120, R.C.M. 1947; R.C.M. 1947, 41-1119, 41-1120.

Part 3

General Prohibitions on Employers

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to such engagement. Failure to state in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact such strike, lockout, or other trouble then actually exists at such place shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118.

39-2-304. Lie detector tests prohibited — exception. (1) No person, firm, corporation, or other business entity or representative thereof shall require as a condition for employment or continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test. A person who violates this section is guilty of a misdemeanor.

(2) This section shall not apply to public law enforcement agencies.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120.

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.

39-2-306. Employment of persons under eighteen as bartenders prohibited. (1) No person under 18 years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer, or wines in any establishment which sells liquors, beer, or wines at retail.

(2) Any retail vendor of liquors, beer, or wines who employs any such person under the age of 18 years is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973; Sec. 41-1135, R.C.M. 1947; (2)En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973; Sec. 41-1136, R.C.M. 1947; R.C.M. 1947, 41-1135, 41-1136.

Part 4

General Obligations of Employees

39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

(2) One who by his own special request induces another to entrust him with the peformance of a service must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force or until he gives notice to his employer that he will not do so.

History: (1)En. Sec. 2670, Civ. C. 1895; re-en. Sec. 5253, Rev. C. 1907; re-en. Sec. 7768, R.C.M. 1921; Cal. Civ. C. Sec. 1975; Field Civ. C. Sec. 1008; re-en. Sec. 7768, R.C.M. 1935; Sec. 41-201, R.C.M. 1947; (2)En. Sec. 2671, Civ. C. 1895; re-en. Sec. 5254, Rev. C. 1907; re-en. Sec. 7769, R.C.M. 1921; Cal. Civ. C. Sec. 1976; Field Civ. C. Sec. 1009; re-en. Sec. 7769, R.C.M. 1935; Sec. 41-202, R.C.M. 1947; (3)En. Sec. 2672, Civ. C. 1895; re-en. Sec. 5255, Rev. C. 1907; re-en. Sec. 7770, R.C.M. 1921; Cal. Civ. C. Sec. 1977; Field Civ. C. Sec. 1010; re-en. Sec. 7770, R.C.M. 1935; Sec. 41-203, R.C.M. 1947; R.C.M. 1947, 41-201, 41-202, 41-203.

39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed.

History: En. Sec. 2673, Civ. C. 1895; re-en. Sec. 5256, Rev. C. 1907; re-en. Sec. 7771, R.C.M. 1921; Cal. Civ. C. Sec. 1978; Field Civ. C. Sec. 1011; re-en. Sec. 7771, R.C.M. 1935; R.C.M. 1947, 41-204.

39-2-403. Duties of employee for his own benefit. One who is employed at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interest of the latter.

History: En. Sec. 2674, Civ. C. 1895; re-en. Sec. 5257, Rev. C. 1907; re-en. Sec. 7772, R.C.M. 1921; Cal. Civ. C. Sec. 1979; Field Civ. C. Sec. 1012; re-en. Sec. 7772, R.C.M. 1935; R.C.M. 1947, 41-205.

39-2-404. Employee must obey employer. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee.

History: En. Sec. 2676, Civ. C. 1895; re-en. Sec. 5259, Rev. C. 1907; re-en. Sec. 7774, R.C.M. 1921; Cal. Civ. C. Sec. 1981; Based on Field Civ. C. Sec. 1014; re-en. Sec. 7774, R.C.M. 1935; R.C.M. 1947, 41-207.

39-2-405. Employee must conform to usage. An employee must perform his service in conformity to the usage of the place of performance unless otherwise directed by his employer or unless it is impracticable or manifestly injurious to his employer to do so.

History: En. Sec. 2677, Civ. C. 1895; re-en. Sec. 5260, Rev. C. 1907; re-en. Sec. 7775, R.C.M. 1921; Cal. Civ. C. Sec. 1982; Field Civ. C. Sec. 1015; re-en. Sec. 7775, R.C.M. 1935; R.C.M. 1947, 41-208.

39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless his employer has notice before employing him of his want of skill.

(2) An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

History: (1)En. Sec. 2678, Civ. C. 1895; re-en. Sec. 5261, Rev. C. 1907; re-en. Sec. 7776, R.C.M. 1921; Cal. Civ. C. Sec. 1983; Field Civ. C. Sec. 1016; re-en. Sec. 7776, R.C.M. 1935; Sec. 41-209, R.C.M. 1947; (2)En. Sec. 2679, Civ. C. 1895; re-en. Sec. 5262, Rev. C. 1907; re-en. Sec. 7777, R.C.M. 1921; Cal. Civ. C. Sec. 1984; Based on Field Civ. C. Sec. 1017; re-en. Sec. 7777, R.C.M. 1935; Sec. 41-210, R.C.M. 1947; R.C.M. 1947, 41-209, 41-210.

39-2-407. Duty to account. An employee must, on demand, render to his employer as often as may be reasonable just accounts of all his transactions in the course of his service and must, without demand, give prompt notice to his employer of everything which he receives for his account.

History: En. Sec. 2681, Civ. C. 1895; re-en. Sec. 5264, Rev. C. 1907; re-en. Sec. 7779, R.C.M. 1921; Cal. Civ. C. Sec. 1986; Field Civ. C. Sec. 1019; re-en. Sec. 7779, R.C.M. 1935; R.C.M. 1947, 41-212.

39-2-408. Duty of employee regarding items received on account of his employer. An employee who receives anything on account of his employer in any capacity other than that of a mere servant is not bound to deliver it to him until demanded and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

History: En. Sec. 2682, Civ. C. 1895; re-en. Sec. 5265, Rev. C. 1907; re-en. Sec. 7780, R.C.M. 1921; Cal. Civ. C. Sec. 1987; Field Civ. C. Sec. 1020; re-en. Sec. 7780, R.C.M. 1935; R.C.M. 1947, 41-213.

39-2-409. Preference to be given to employer's business. An employee who has any business to transact on his own account similar to that entrusted to him by his employer must always give the latter the preference.

History: En. Sec. 2683, Civ. C. 1985; re-en. Sec. 5266, Rev. C. 1907; re-en. Sec. 7781, R.C.M. 1921; Cal. Civ. C. Sec. 1988; Based on Field Civ. C. Sec. 1021; re-en. Sec. 7781, R.C.M. 1935; R.C.M. 1947, 41-214.

39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

History: En. Sec. 2684, Civ. C. 1895; re-en. Sec. 5267, Rev. C. 1907; re-en. Sec. 7782, R.C.M. 1921; Cal. Civ. C. Sec. 1989; Field Civ. C. Sec. 1022; re-en. Sec. 7782, R.C.M. 1935; R.C.M. 1947, 41-215.

39-2-411. Surviving employee. Where service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

History: En. Sec. 2686, Civ. C. 1895; re-en. Sec. 5269, Rev. C. 1907; re-en. Sec. 7784, R.C.M. 1921; Cal. Civ. C. Sec. 1991; Field Civ. C. Sec. 1024; re-en. Sec. 7784, R.C.M. 1935; R.C.M. 1947, 41-217.

Part 5

Termination of Employment

39-2-501. Termination of employment generally. Every employment is terminated by:

(1) the expiration of its appointed term;
(2) the extinction of its subject;
(3) the death of the employee; or
(4) his legal incapacity to act as such.

History: En. Sec. 2701, Civ. C. 1895; re-en. Sec. 5272, Rev. C. 1907; re-en. Sec. 7787, R.C.M. 1921; Cal. Civ. C. Sec. 1997; Field Civ. C. Sec. 1027; re-en. Sec. 7787, R.C.M. 1935; R.C.M. 1947, 41-302.

39-2-502. Termination by death or incapacity of employer. (1) Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

(a) the death of the employer; or
(b) his legal incapacity to contract.

(2) An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

History: (1)En. Sec. 2700, Civ. C. 1895; re-en. Sec. 5271, Rev. C. 1907; re-en. Sec. 7786, R.C.M. 1921; Cal. Civ. C. Sec. 1996; Field Civ. C. Sec. 1026; re-en. Sec. 7786, R.C.M. 1935; Sec. 41-301, R.C.M. 1947; (2)En. Sec. 2702, Civ. C. 1895; re-en. Sec. 5273, Rev. C. 1907; re-en. Sec. 7788, R.C.M. 1921; Cal. Civ. C. Sec. 1998; Field Civ. C. Sec. 1028; re-en. Sec. 7788, R.C.M. 1935; Sec. 41-303, R.C.M. 1947; R.C.M. 1947, 41-301, 41-303.

39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, 30-11-601 through 30-11-605, and 39-2-302.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R.C.M. 1921; Cal. Civ. C. Sec. 1999; Field Civ. C. Sec. 1029; re-en. Sec. 7789, R.C.M. 1935; amd. Sec. 2, Ch. 245, L. 1969; R.C.M. 1947, 41-304; amd. Sec. 4, Ch. 397, L. 1979.

39-2-504. Termination by employer for fault. An employment, even for a specified term, may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment or in case of his habitual neglect of his duty or continued incapacity to perform it.

History: En. Sec. 2704, Civ. C. 1895; re-en. Sec. 5275, Rev. C. 1907; re-en. Sec. 7790, R.C.M. 1921; Cal. Civ. C. Sec. 2000; Field Civ. C. Sec. 1030; re-en. Sec. 7790, R.C.M. 1935; R.C.M. 1947, 41-305.

39-2-505. Termination by employee for fault. An employment, even for a specified term, may be terminated by the employee at any time in case of any willful or permanent breach of the obligations of his employer to him as an employee.

History: En. Sec. 2705, Civ. C. 1895; re-en. Sec. 5276, Rev. C. 1907; re-en. Sec. 7791, R.C.M. 1921; Cal. Civ. C. Sec. 2001; Based on Field Civ. C. Sec. 1031; re-en. Sec. 7791, R.C.M. 1935; R.C.M. 1947, 41-306.

Part 6

Master and Servant

39-2-601. Servant defined. A servant is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling and who in such service remains entirely under the control and direction of the latter, who is called his master.

History: En. Sec. 2720, Civ. C. 1895; re-en. Sec. 5279, Rev. C. 1907; re-en. Sec. 7794, R.C.M. 1921; Cal. Civ. C. Sec. 2009; Field Civ. C. Sec. 1034; re-en. Sec. 7794, R.C.M. 1395; R.C.M. 1947, 41-401.

39-2-602. Term of hiring. (1) A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for 1 year; a hiring at a daily rate, for 1 day; a hiring by piecework, for no specified term.

(2) In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

History: (1)En. Sec. 2721, Civ. C. 1895; re-en. Sec. 5280, Rev. C. 1907; re-en. Sec. 7795, R.C.M. 1921; Cal. Civ. C. Sec. 2010; Field Civ. C. Sec. 1035; re-en. Sec. 7795, R.C.M. 1935; Sec. 41-402, R.C.M. 1947; (2)En. Sec. 2722, Civ. C. 1895; re-en. Sec. 5281, Rev. C. 1907; re-en. Sec. 7796, R.C.M. 1921; Cal. Civ. C. Sec. 2011; Based on Field Civ. C. Sec. 1036; re-en. Sec. 7796, R.C.M. 1935; Sec. 41-403, R.C.M. 1947; R.C.M. 1947, 41-402, 41-403.

39-2-603. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: En. Sec. 2723, Civ. C. 1895; re-en. Sec. 5282, Rev. C. 1907; re-en. Sec. 7797, R.C.M. 1921; Cal. Civ. C. Sec. 2012; Field Civ. C. Sec. 1037; re-en. Sec. 7797, R.C.M. 1395; R.C.M. 1947, 41-404.

39-2-604. Time of service. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case 10 hours in the day.

History: En. Sec. 2724, Civ. C. 1895; re-en. Sec. 5283, Rev. C. 1907; re-en. Sec. 7798, R.C.M. 1921; Cal. Civ. C. Sec. 2013; Field Civ. C. Sec. 1038; re-en. Sec. 7798, R.C.M. 1935; R.C.M. 1947, 41-405.

39-2-605. Servant to pay over without demand. A servant must deliver to his master without demand, as soon as with reasonable diligence he can find him, everything that he receives for his account, but he is not bound without orders from his master to send anything to him through another person.

History: En. Sec. 2725, Civ. C. 1895; re-en. Sec. 5284, Rev. C. 1907; re-en. Sec. 7799, R.C.M. 1921; Cal. Civ. C. Sec. 2014; Field Civ. C. Sec. 1039; re-en. Sec. 7799, R.C.M. 1935; R.C.M. 1947, 41-406.

39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or

(2) if, being employed about the person of his master or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that, if the master had known or contemplated it, he would not have so employed him.

History: En. Sec. 2726, Civ. C. 1895; re-en. Sec. 5285, Rev. C. 1907; re-en. Sec. 7800, R.C.M. 1921; Cal. Civ. C. Sec. 2015; Field Civ. C. Sec. 1040; re-en. Sec. 7800, R.C.M. 1935; R.C.M. 1947, 41-407.

Part 7

General Liability Arising From Employment Relationship

39-2-701. Indemnification of employee. (1) An employer must indemnify his employee, except as prescribed in subsection (2) of this section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

(2) An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

(3) An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

History: (1)En. Sec. 2660, Civ. C. 1895; re-en. Sec. 5242, Rev. C. 1907; re-en. Sec. 7757, R.C.M. 1921; Cal. Civ. C. Sec. 1969; Field Civ. C. Sec. 1005; re-en. Sec. 7757, R.C.M. 1935; Sec. 41-102, R.C.M. 1947; (2)En. Sec. 2661, Civ. C. 1895; re-en. Sec. 5243, Rev. C. 1907; re-en. Sec. 7758, R.C.M. 1921; Cal. Civ. C. Sec. 1970; Based on Field Civ. C. Sec. 1006; re-en. Sec. 7758, R.C.M. 1935; Sec. 41-103, R.C.M. 1947; (3)En. Sec. 2662, Civ. C. 1895; re-en. Sec. 5244, Rev. C. 1907; re-en. Sec. 7759, R.C.M. 1921; Cal. Civ. C. Sec. 1971; Field Civ. C. Sec. 1007; re-en. Sec. 7759, R.C.M. 1935; Sec. 41-104, R.C.M. 1947; R.C.M. 1947, 41-102, 41-103, 41-104.

39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter, and the employer is liable to him for the value of such services only as are properly rendered if the service is not gratuitous.

History: En. Sec. 2685, Civ. C. 1895; re-en. Sec. 5268, Rev. C. 1907; re-en. Sec. 7783, R.C.M. 1921; Cal. Civ. C. Sec. 1990; Field Civ. C. Sec. 1023; re-en. Sec. 7783, R.C.M. 1935; R.C.M. 1947, 41-216.

39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee thereof or by the mismanagement of any other employee thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee thereof when such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which he is employed. No contract which restricts such liability is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee thereof within this state, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

History: (1), (2)En. Secs. 1, 2, Ch. 1, L. 1905; re-en. Secs. 5251, 5252, Rev. C. 1907; re-en. Secs. 7766, 7767, R.C.M. 1921; re-en. Secs. 7766, 7767, R.C.M. 1935; Secs. 41-111, 41-112, R.C.M. 1947; (3), (4)En. Secs. 1, 3, Ch. 83, L. 1903; re-en. Secs. 5245, 5247, Rev. C. 1907; re-en. Secs. 7760, 7762, R.C.M. 1921; re-en. Secs. 7760, 7762, R.C.M. 1935; Secs. 41-105, 41-107, R.C.M. 1947; R.C.M 1947, 41-105, 41-107, 41-111, 41-112; amd. Sec. 5, Ch. 397, L. 1979.

39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee thereof within this state, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such employee in consequence of any injury or damages so sustained, the right of action survives and may be prosecuted and maintained by his heirs or personal representatives.

History: En. Secs. 1, 2, 3, Ch. 23, L. 1905; re-en. Secs. 5248, 5249, 5250, Rev. C. 1907; re-en. Secs. 7763, 7764, 7765, R.C.M. 1921; re-en. Secs. 7763, 7764, 7765, R.C.M. 1935; R.C.M. 1947, 41-108, 41-109, 41-110; amd. Sec. 6, Ch. 397, L. 1979.

39-2-705. Contract discharging employer liability for negligence void. Any contract or agreement entered into by any person, company, or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R.C.M. 1921; re-en. Sec. 7555, R.C.M. 1935; R.C.M. 1947, 13-803.

Part 8

Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge. It is the duty of any person after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct, and complete statement of the reason of his discharge and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

History: En. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R.C.M. 1921; re-en. Sec. 3094, R.C.M. 1935; R.C.M. 1947, 41-1311.

39-2-802. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents or attempts to prevent by word or writing of any kind such discharged employee from obtaining employment with any other person, such person is punishable as provided in 39-2-804 and is liable in punitive damages to such discharged person, to be recovered by civil action. No person is prohibited from informing by word or writing any person to whom such discharged person or employee has applied for employment a truthful statement of the reason for such discharge.

History: En. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R.C.M. 1921; re-en. Sec. 3092, R.C.M. 1935; R.C.M. 1947, 41-1309.

39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804.

History: En. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R.C.M. 1921; re-en. Sec. 3093, R.C.M. 1935; R.C.M. 1947, 41-1310; amd. Sec. 7, Ch. 397, L. 1979.

39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

History: En. Sec. 656, Pen. C. 1895; re-en. Sec. 8467, Rev. C. 1907; re-en. Sec. 11219, R.C.M. 1921; re-en. Sec. 11219, R.C.M. 1935; Sec. 94-3555, R.C.M. 1947; redes. 41-1325 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 41-1325.

CHAPTER 3

WAGES AND WAGE PROTECTION

Part 1 — General Provisions

Section
39-3-101. Employer to furnish itemized statement of deductions.
39-3-102. Compensation of employee dismissed for cause.
39-3-103. Compensation of employee leaving for cause.
39-3-104. Equal pay for women for equivalent service.

Part 2 — Payment of Wages

39-3-201. Definitions.
39-3-202. Rulemaking power of commissioner.
39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays.
39-3-204. Payment of wages generally.
39-3-205. Payment of wages when employee separated from employment prior to payday.
39-3-206. Penalty for failure to pay wages at times specified in law.
39-3-207. Period within which employee may recover penalties.
39-3-208. Contracts in violation of part void.
39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages.
39-3-210. Investigative powers of commissioner.
39-3-211. Commissioner to take wage assignments.
39-3-212. Court enforcement of commissioner's determination.
39-3-213. Disposition of wages.
39-3-214. Court costs and attorneys' fees.
39-3-215. Authority of county attorney.

Part 3 — Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title.
39-3-302. Purpose.

39-3-303. Reciprocal agreements for collection of wages.
39-3-304. Actions in other states for collections of claims — assignments for collection.
39-3-305. Claims assigned by other states — actions — collection.
39-3-306. Limitations.

Part 4 — Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy.
39-3-402. Definitions.
39-3-403. Regulations.
39-3-404. Minimum wage.
39-3-405. Overtime compensation.
39-3-406. Exclusions.
39-3-407. Enforcement.
39-3-408. Provisions cumulative.

Part 5 — Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry.
39-3-502. Operator to file statement — penalty for failure to file.
39-3-503. Report of violations to county attorney by commissioner.
39-3-504. Report of violations directly to county attorney by employee.
39-3-505. County attorney to notify commissioner of violation reported directly by employee.
39-3-506. County attorney to file complaint in district court on belief of violation.
39-3-507. Prayer for relief.
39-3-508. Summons — service of process.
39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required.
39-3-510. Show-cause hearing — restraining order until bond furnished.
39-3-511. Bond requirements.
39-3-512. Enjoining further operations in event bond not filed.
39-3-513. Costs of proceeding.
39-3-514. Punishment of employer for contempt.
39-3-515. Publication of notice of court order.
39-3-516. Review of court order by supreme court.
39-3-517. Suit on bond.
39-3-518. Attorney's fee for suit on bond.
39-3-519. Clarification as to construction and applicability of part.
39-3-520. Remedy cumulative.

Part 6 — Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title.
39-3-602. Purpose.
39-3-603. Definitions.
39-3-604. Bond to be filed by lessee — bond requirements.
39-3-605. New or additional bond.
39-3-606. Power of commissioner to discharge existing sureties and require others.
39-3-607. Enjoining lessee's business until bond filed.
39-3-608. Unlawful for lessee to operate business without bond.

Part 7 — Contractors' Bonds for Wages and Benefits

39-3-701. Definitions.
39-3-702. Rules.
39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements.
39-3-704. Exception.
39-3-705. Suit on bond.
39-3-706. Liability of person contracting with contractor for failure to require bond.

Part 1

General Provisions

39-3-101. Employer to furnish itemized statement of deductions. (1) All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction.

(2) Where no deduction is made in such payment of wages or salaries, the employer shall give to the employee a statement that the payment does not include any such deductions.

History: En. Sec. 1, Ch. 159, L. 1957; R.C.M. 1947, 41-117.

39-3-102. Compensation of employee dismissed for cause. An employee dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

History: En. Sec. 2706, Civ. C. 1895; re-en. Sec. 5277, Rev. C. 1907; re-en. Sec. 7792, R.C.M. 1921; Cal. Civ. C. Sec. 2002; Field Civ. C. Sec. 1032; re-en. Sec. 7792, R.C.M. 1935; R.C.M. 1947, 41-307.

39-3-103. Compensation of employee leaving for cause. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

History: En. Sec. 2707, Civ. C. 1895; re-en. Sec. 5278, Rev. C. 1907; re-en. Sec. 7793, R.C.M. 1921; Cal. Civ. C. Sec. 2003; Field Civ. C. Sec. 1033; re-en. Sec. 7793, R.C.M. 1935; R.C.M. 1947, 41-308.

39-3-104. Equal pay for women for equivalent service. (1) It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense.

History: En. Secs. 1, 2, Ch. 147, L. 1919; re-en. Secs. 3090, 3091, R.C.M. 1921; re-en. Secs. 3090, 3091, R.C.M. 1935; R.C.M. 1947, 41-1307, 41-1308; amd. Sec. 8, Ch. 397, L. 1979.

Part 2

Payment of Wages

39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Commissioner of labor" refers to the director, commissioner, or chief of the labor department as such department is defined by law or any person or persons designated by him for the purpose of this part.

(2) "Employ" means permit or suffer to work.

(3) "Employee" includes any person who works for another for hire.

(4) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States.

(5) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly and shall include bonus, piecework, tips, and gratuities of any kind.

History: **En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(3).**

39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of this part.

History: **En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 9, Ch. 397, L. 1979.**

39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or year, and date of paydays. Such notification must be in writing to each employee or by posting of notice in a conspicuous place.

(2) The provisions of this section do not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall comply with the provisions of 39-3-205.

History: **En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(1); amd. Sec. 10, Ch. 397, L. 1979.**

39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each employee the wages earned by such employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee is absent from the regular place of labor, he is entitled to such payment at any time thereafter.

(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives his wages earned at least once monthly.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(2); amd. Sec. 11, Ch. 397, L. 1979.

39-3-205. Payment of wages when employee separated from employment prior to payday. (1) Except as provided in subsection (2), whenever any employee is separated from the employ of any employer, all the unpaid wages of such employee shall become due and payable within 3 days, except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, where an employer's payroll checks originate at an office outside the state, the time provided herein for payment of wages shall be extended for 3 additional days.

(2) When an employee is separated for cause from employment by the employer, all the unpaid wages of the employee shall become due and payable immediately upon such separation.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R.C.M. 1921; re-en. Sec. 3086, R.C.M. 1935; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967; R.C.M. 1947, 41-1303; amd. Sec. 1, Ch. 492, L. 1979.

39-3-206. Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this part, who fails to pay any of his employees as provided in this part or violates any other provision of this part shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows: a sum equivalent to the fixed amount of 5% of the wages due and unpaid shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than 20 days after the date such wages were due.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

39-3-207. Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of 39-3-206 which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R.C.M. 1921; re-en. Sec. 3087, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1973; R.C.M. 1947, 41-1304.

39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but such employee may sue to recover his wages earned, together with the 5% penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid.

History: En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R.C.M. 1921; re-en. Sec. 3088, R.C.M. 1935; R.C.M. 1947, 41-1305; amd. Sec. 12, Ch. 397, L. 1979.

39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. It shall be the duty of the commissioner of labor to inquire diligently for any violations of this part and to institute actions for the collection of unpaid wages and for the penalties provided for herein in such cases as he may deem proper and to enforce generally the provisions of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters which they may consider appropriate to determine whether any person has violated any provision of this part or any rule issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.1; amd. Sec. 13, Ch. 397, L. 1979.

39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 14, Ch. 397, L. 1979.

39-3-212. Court enforcement of commissioner's determination. A determination by the commissioner of labor and industry made after a hearing as provided for in parts 2 and 4 of this chapter may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination if the time provided to initiate judicial review by the employer has passed. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the commissioner's determination.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974; R.C.M. 1947, 41-1314.4.

39-3-213. Disposition of wages. (1) The commissioner of labor and industry shall deposit wages collected by him under parts 2 and 4 of this chapter into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) which remain unclaimed for more than 1 year from the date of issuance shall be returned to the state auditor for cancellation in accordance with 17-8-303.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974; R.C.M. 1947, 41-1314.3; amd. Sec. 1, Ch. 53, L. 1979.

39-3-214. Court costs and attorneys' fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees are required of him nor is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

History: (1)En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R.C.M. 1921; re-en. Sec. 3089, R.C.M. 1935; Sec. 41-1306, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 40, L. 1967; Sec. 41-1314.2, R.C.M. 1947; R.C.M. 1947, 41-1306, 41-1314.2(part); amd. Sec. 15, Ch. 397, L. 1979.

39-3-215. Authority of county attorney. Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for such violations of this part as may come to his knowledge or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Part 3

Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title. This part may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: En. 41-1326 by Sec. 1, Ch. 216, L. 1977; R.C.M. 1947, 41-1326.

39-3-302. Purpose. The purpose of this part is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in part 2 of this chapter and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: En. 41-1327 by Sec. 2, Ch. 216, L. 1977; R.C.M. 1947, 41-1327.

39-3-303. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: En. 41-1328 by Sec. 3, Ch. 216, L. 1977; R.C.M. 1947, 41-1328.

39-3-304. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 39-3-303 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: En. 41-1329 by Sec. 4, Ch. 216, L. 1977; R.C.M. 1947, 41-1329.

39-3-305. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: En. 41-1330 by Sec. 5, Ch. 216, L. 1977; R.C.M. 1947, 41-1330.

39-3-306. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: En. 41-1331 by Sec. 6, Ch. 216, L. 1977; R.C.M. 1947, 41-1331.

Part 4

Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy. It is declared to be the policy of this part to:

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and

(3) sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971; R.C.M. 1947, 41-2301.

39-3-402. Definitions. As used in this part the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" includes any individual employed by an employer.

(4) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(5) "Farm worker" means any person employed to do any service performed on a farm or ranch.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided, however, that in no case shall such inclusion exceed an amount equal to 40% of the total wage paid by such employer to such employee.

History: En. Sec. 2, Ch. 417, L. 1971; R.C.M. 1947, 41-2302.

39-3-403. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this part. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall thereupon set such matter for hearing in the county of residence of such protestant within 30 days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305.

39-3-404. Minimum wage. (1) Except as may otherwise be provided pursuant to this part, every employer shall pay to each of his employees wages at a rate not less than provided in subsections (1)(a) and (1)(b), save and except for farm workers as herein defined:

(a) $1.80 an hour for the first year from July 1, 1975;

(b) $2.00 an hour for the second year from July 1, 1975, and thereafter.

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(i) $420 a month for the first year from July 1, 1975;

(ii) $460 a month for the second year from July 1, 1975, and thereafter.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(a), (c).

39-3-405. Overtime compensation. (1) No employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which he is employed.

(2) No overtime provision shall apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging, or other facilities shall not employ said students for a workweek longer than 48 hours, unless such students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which they are employed.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(b).

39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as baby sitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

History: En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973; R.C.M. 1947, 41-2304; (2)En. Sec. 1, Ch. 572, L. 1979.

Compiler's Comments

Commissioner correction. In subsection (2)(h)(ii), "34-3-404" was changed to "39-3-404" by the Code Commissioner, 1979, to correct a typographical error.

39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be pursued in accordance with part 2 of this chapter, as amended. This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry. The commissioner may enforce this part without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973; R.C.M. 1947, 41-2306; amd. Sec. 1, Ch. 49, L. 1979.

39-3-408. Provisions cumulative. The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973; R.C.M. 1947, 41-2307.

Part 5

Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate is not considered an encumbrance.

History: En. Sec. 1, Ch. 39, L. 1939; R.C.M. 1947, 41-1312; amd. Sec. 16, Ch. 397, L. 1979.

39-3-502. Operator to file statement — penalty for failure to file. (1) Every person, firm, or partnership coming within the provisions of this part shall, before commencing operations, file with the commissioner of labor and industry and also in the office of the county clerk and recorder of each county where such operations are to be carried on a verified statement showing the names and addresses of each party interested therein or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation, and the names and addresses of the person or persons resident of Montana designated as the person or persons upon whom service of process may be made.

(2) Every person, firm, partnership, or corporation failing to file a statement with the commissioner of labor and industry and in the offices of the county clerk and recorders, as provided in subsection (1), shall be deemed guilty of a misdemeanor and punishable as provided by law.

History: (1)En. Sec. 2, Ch. 39, L. 1939; Sec. 41-1313, R.C.M. 1947; (2)En. Sec. 3, Ch. 39, L. 1939; Sec. 41-1314, R.C.M. 1947; R.C.M. 1947, 41-1313, 41-1314.

39-3-503. Report of violations to county attorney by commissioner. Whenever it shall appear from reliable information satisfactory to the commissioner of labor and industry that any person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part shall have failed to pay any wages or salaries due his employees as required by part 2 of this chapter, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this part and part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(1).

39-3-504. Report of violations directly to county attorney by employee. Any employee may make complaint directly to the county attorney relative to any violation of this part or part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 17, Ch. 397, L. 1979.

39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep the commissioner advised of each step in any proceeding taken by the county attorney thereunder.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 18, Ch. 397, L. 1979.

39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of this part or part 2 of this chapter have been violated and that such violation was willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, he shall file a complaint in district court. All proceedings upon such complaint must be promptly prosecuted.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 19, Ch. 397, L. 1979.

39-3-507. Prayer for relief. Should such complaint be filed by the county attorney upon his own motion or at said request of said commissioner of labor and industry, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part).

39-3-508. Summons — service of process. (1) Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer, who shall have 10 days after such service to appear and defend such action.

(2) All orders and other process provided for in this part shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a nonresident or a corporation without officers or directors within the county who cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or foreman in charge of the work or, there being none such, then posting a copy of the order or other process provided to be served herein in a conspicuous place at or near the entrance to the principal workings shall be deemed sufficient service.

History: (1)En. Sec. 4, Ch. 39, L. 1939; Sec. 41-1315, R.C.M. 1947; (2)En. Sec. 7, Ch. 39, L. 1939; Sec. 41-1318, R.C.M. 1947; R.C.M. 1947, 41-1315(part), 41-1318.

39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon such complaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then due and thereafter to accrue to his employees within said county. Service of such order shall be made at least 5 days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown.

History: En. Sec. 5, Ch. 39, L. 1939; R.C.M. 1947, 41-1316.

39-3-510. Show-cause hearing — restraining order until bond furnished. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was willful or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries or that the employer is a nonresident of the state without visible property in said county subject to execution or who has within 2 years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county obligating the employer to pay all wages and salaries as required by part 2 of this chapter.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-511. Bond requirements. (1) Said bond may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) Said bond shall be in the sum of not less than $500 for each unit of five men or less employed by such person, firm, partnership, or corporation.

(3) Said bond shall continue in force for 1 year.

(4) Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said approval to be endorsed thereon.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-512. Enjoining further operations in event bond not filed. (1) In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court shall have been fully complied with.

(2) The county attorney of the county wherein such proceedings are had or the attorney general of the state shall, at his or their discretion, file such action and prosecute the same.

History: **En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).**

39-3-513. Costs of proceeding. The said district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county.

History: **En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).**

39-3-514. Punishment of employer for contempt. In event the employer fails for 30 days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court.

History: **En. Sec. 9, Ch. 39, L. 1939; R.C.M. 1947, 41-1320.**

39-3-515. Publication of notice of court order. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county of the entry of the order against the employer requiring said employer to furnish said bond. Said publication shall be for 4 consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding.

History: **En. Sec. 10, Ch. 39, L. 1939; R.C.M. 1947, 41-1321.**

39-3-516. Review of court order by supreme court. In event any employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari.

History: **En. Sec. 12, Ch. 39, L. 1939; R.C.M. 1947, 41-1323.**

39-3-517. Suit on bond. Any person whose wages or salary has remained unpaid for 15 days or more after due shall have a right to sue upon said bond for the recovery of his wages or salary.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-518. Attorney's fee for suit on bond. In event any person whose wages or salary has remained unpaid for 15 days or more after due shall bring suit as in 39-3-517 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney's fee.

History: En. Sec. 11, Ch. 39, L. 1939; R.C.M. 1947, 41-1322.

39-3-519. Clarification as to construction and applicability of part. (1) Nothing contained in this part shall be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if he or it pays for all labor in full each day or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) Nothing herein shall prohibit the making or entering into of any wage or working agreement such as grubstake agreements and/or similar agreements, provided such employer or contractor keeps in force proper workers' compensation insurance.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-520. Remedy cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries.

History: En. Sec. 13, Ch. 39, L. 1939; R.C.M. 1947, 41-1324.

Part 6

Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title. This part shall be known as the "Restaurant, Bar, and Tavern Wage Protection Act".

History: En. Sec. 1, Ch. 155, L. 1965; R.C.M. 1947, 41-2001.

39-3-602. Purpose. The purpose of this part is to protect the state of Montana and employees of lessees conducting business as restaurants, bars, and taverns; to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees; and to assure the payment of payroll taxes to the division of employment security of the department of labor and industry.

History: En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975; R.C.M. 1947, 41-2003.

39-3-603. Definitions. For the purposes of this part, the words and phrases used herein have the following meaning:

(1) "Bar" or "tavern" means a house where liquor or beer is sold to be drunk on the premises.

(2) "Beer" means any beverage so defined in the Montana Alcoholic Beverages Code.

(3) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(4) "Employee" means a person who works for wages or salary in the service of an employer.

(5) "Lessee" means one to whom a lease is made.

(6) "Liquor" means any beverage so defined in the Montana Alcoholic Beverages Code.

(7) "Person" includes any establishment, firm, partnership, corporation, person, or association of persons.

(8) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

History: En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975; R.C.M. 1947, 41-2004.

39-3-604. Bond to be filed by lessee — bond requirements. (1) Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar, or tavern is hereby required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner of labor and industry. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom is grounds for enjoining the conduct of business, as provided for in 39-3-607, until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.

(2) The bond and affidavit required by subsection (1) of this section shall be filed with the commissioner of labor and industry. The state of Montana shall be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond shall be conditioned to assure that in any lease transaction of the type referred to in 39-3-608 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the division of employment security as a result of payroll taxes.

History: Ap. p. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974; Sec. 41-2005, R.C.M. 1947; Ap. p. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975; Sec. 41-2006, R.C.M. 1947; R.C.M. 1947, 41-2005, 41-2006; amd. Sec. 1, Ch. 60, L. 1979.

39-3-605. New or additional bond. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of the state of Montana or the employees of a lessee.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-606. Power of commissioner to discharge existing sureties and require others. The commissioner of labor and industry may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-607. Enjoining lessee's business until bond filed. If any person engages in the restaurant, bar, or tavern business as lessee without having first filed a bond as required by 39-3-604(1), the attorney general, the commissioner of labor and industry, or any citizen, group of citizens, or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this part has been met.

History: En. Sec. 8, Ch. 155, L. 1965; R.C.M. 1947, 41-2008.

39-3-608. Unlawful for lessee to operate business without bond. From and after July 1, 1965, it shall be unlawful for any person to lease premises to be used as the place for conducting a restaurant, bar, or tavern business without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of 39-3-604(1).

History: En. Sec. 2, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974; R.C.M. 1947, 41-2002.

Part 7

Contractors' Bonds for Wages and Benefits

39-3-701. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Contractor" means any person, firm, association, or corporation engaged in the construction business.

(3) "Resident contractor" means any person who is a bona fide resident of this state, any partnership or association, the majority of whose members are bona fide residents of this state, or any corporation organized and existing under the laws of the state of Montana.

History: (1), (2)En. 41-2501 by Sec. 1, Ch. 208, L. 1975; Sec. 41-2701, R.C.M. 1947; (3)En. 41-2504 by Sec. 4, Ch. 208, L. 1975; Sec. 41-2704, R.C.M. 1947; R.C.M. 1947, 41-2701, 41-2704(2).

39-3-702. Rules. The commissioner shall promulgate any rules necessary to carry out the provisions of this part.

History: En. 41-2505 by Sec. 5, Ch. 208, L. 1975; R.C.M. 1947, 41-2705.

39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements. (1) Any contractor who contracts with another to do any work or perform any services for the other, except personal services of the contractor not involving work of hired employees, shall furnish a surety bond or other form of security to the other which shall be:

(a) approved by the commissioner;

(b) in an amount equal to the contractor's average monthly payroll as estimated by the commissioner;

(c) in the name of the state of Montana;

(d) for the purpose of insuring the wages and fringe benefits of all workers employed by the contractor for the contracted work;

(e) filed with the commissioner within 1 week of the making of the contract or the commencement of work thereunder, whichever comes first.

(2) Only one bond shall be required on any contractor for each year, and when the bond is filed with and approved by the commissioner, the commissioner shall certify to any person contracting with a contractor that the bond is in full force and effect.

History: **En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(1), (3).**

39-3-704. Exception. The provisions of this part do not apply to any resident contractor who presents to the commissioner a financial statement certified by a licensed certified public accountant attesting to a net worth of the contractor in excess of $50,000.

History: **En. 41-2504 by Sec. 4, Ch. 208, L. 1975; R.C.M. 1947, 41-2704(1).**

39-3-705. Suit on bond. Any employee employed by a contractor may bring an action on the surety bond in his own name for unpaid wages and fringe benefits.

History: **En. 41-2503 by Sec. 3, Ch. 208, L. 1975; R.C.M. 1947, 41-2703.**

39-3-706. Liability of person contracting with contractor for failure to require bond. Any person contracting with a contractor who fails to require the contractor to acquire the surety bond provided for in 39-3-703(1) is liable to the employees of that contractor for their wages and fringe benefits on that particular job.

History: **En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(2).**

CHAPTER 4

HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 — Hours of Labor—Penalties and Liability for Violations Thereof

Section
39-4-101. Hoisting engineers.
39-4-102. Drivers and attendants of motor buses.
39-4-103. Underground miners and smeltermen.
39-4-104. Strip mining.
39-4-105. Retail stores.
39-4-106. Telephone operators.
39-4-107. State and municipal governments, school districts, mines, mills, and smelters.
39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.
39-4-109. Cement plants, quarries, and hydroelectric dams.
39-4-110. Sugar refineries.
39-4-111. Restaurants.
39-4-112. Persons employed about public amusements.

Part 1

Hours of Labor — Penalties and Liability for Violations Thereof

39-4-101. Hoisting engineers. (1) It shall be unlawful for any person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section shall apply only to such plants as are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine where said hoisting engine develops 15 or more horsepower or at or in any mine wherein there are 15 or more men employed underground in 24 hours of each day. However, the provisions of this section shall not apply to any person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any person or persons, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punishable as such.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R.C.M. 1921; re-en. Sec. 3068, R.C.M. 1935; Sec. 41-1101, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R.C.M. 1921; re-en. Sec. 3069, R.C.M. 1935; Sec. 41-1102, R.C.M. 1947; R.C.M. 1947, 41-1101, 41-1102.

39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of such time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision thereof.

(3) The provisions of this section do not apply when life is in danger or property is in imminent danger of destruction; or in case of delay due to accident or impassable roads, abnormal road conditions, or snow blockades; or when mails for the drivers or attendants are delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which he is rightly employed.

(5) Any employer or supervisor in charge of employees who requires a driver or attendant as above defined to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1935; re-en. Secs. 3069.1, 3069.2, 3069.3, R.C.M. 1935; R.C.M. 1947, 41-1103, 41-1104, 41-1105; amd. Sec. 1, Ch. 126, L. 1979; amd. Sec. 20, Ch. 397, L. 1979.

39-4-103. Underground miners and smeltermen. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours per day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R.C.M. 1921; re-en. Sec. 3071, R.C.M. 1935; Sec. 41-1107, R.C.M. 1947; (2)En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R.C.M. 1921; re-en. Sec. 3072, R.C.M. 1935; Sec. 41-1108, R.C.M. 1947; (3)En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R.C.M. 1921; amd. Sec. 1, Ch. 116, L. 1929; re-en. Sec. 3073, R.C.M. 1935; Sec. 41-1109, R.C.M. 1947; R.C.M. 1947, 41-1107, 41-1108, 41-1109; amd. Sec. 21, Ch. 397, L. 1979.

39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" is defined as the removal of the overburden and coal or other materials from the ground and all of the operations pertaining thereto, without the necessity of providing timbers for the holding of said ground in place.

(2) A period of not more than 8 hours will constitute a day's labor of all employees working in strip mining, except in cases of emergencies for the protection of life or property when same is in danger.

(3) Any person, company, corporation, or lessee of the same who shall violate the provisions of this section shall upon conviction be punished by a fine of not less than $50 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment. Each and every day that such person, company, corporation, or lessee may continue to violate the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1933; re-en. Secs. 3546.7, 3546.8, 3546.9, R.C.M. 1935; R.C.M. 1947, 41-1110, 41-1111, 41-1112.

39-4-105. Retail stores. (1) A period of 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work in all cities and towns having a population of 2,500 or over for all persons employed in retail stores and in all leased businesses where the lessor dictates the price, kind of merchandise that is sold, and the hours and conditions of operation of the business; all persons employed in delivering goods sold in such stores; all persons employed in wholesale warehouses used for supplying retail establishments with goods; and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacists or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and

upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113, R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115, R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114, R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

39-4-106. Telephone operators. (1) On all lines of public telephones operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards more than 9 hours in each 24 for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $100 or more than $500. Each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 3074, R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M. 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117.

39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. In cases of emergency when life or property is in imminent danger this subsection does not apply.

(2) For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100

or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979.

39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.

39-4-109. Cement plants, quarries, and hydroelectric dams. (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries and hydroelectric dams.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127.

39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: En. Secs. 1, 2, 3, Ch. 90, L. 1933; re-en. Secs. 3083.3, 3083.4, 3083.5, R.C.M. 1935; R.C.M. 1947, 41-1128, 41-1129, 41-1130; amd. Sec. 24, Ch. 397, L. 1979.

39-4-111. Restaurants. (1) A period of not more than 8 hours shall constitute a day's work, and a period of not to exceed 48 hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments. The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any person or persons working more than 8 hours during any 12 consecutive hours or more than 48 hours during any week for the purpose of relieving another employee in case of sickness or where the health of the public is imperiled, where life and property are in imminent danger, or for other unforeseen cause or causes.

(3) Any person, corporation, manager, agent, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $50 or by imprisonment in the county jail for not less than 15 days or more than 60 days or by both such fine and imprisonment.

History: (1), (2)En. Sec. 1, Ch. 199, L. 1939; Sec. 41-1131, R.C.M. 1947; (3)En. Sec. 2, Ch. 199, L. 1939; Sec. 41-1132, R.C.M. 1947; R.C.M. 1947, 41-1131, 41-1132.

39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in such an exhibition, show, or contest shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any traveling circus or carnival which does not remain in any one county of the state for a period of more than 3 days and shall not apply to any person or persons working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or where a breakdown in machinery occurs or where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, employer, employee, contestant, or participant who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than $50. For a second offense, he shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months or by both such fine and imprisonment. For a third or subsequent offense, he shall be punished by a fine of $500 and imprisonment in the county jail for a term of 6 months. Each day's violation of this section shall constitute a separate offense within the meaning of this section.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1941; Sec. 41-1133, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1941; Sec. 41-1134, R.C.M. 1947; R.C.M. 1947, 41-1133, 41-1134.

CHAPTER 5

THE EMPLOYMENT AGENCY ACT

Part 1 — General Provisions

Section

39-5-101. Short title.
39-5-102. Definitions.
39-5-103. Administration — rules.
39-5-104. Provisions of chapter exclusive.
39-5-105. Power of political subdivision to license for revenue purposes not affected.

Part 2 — Licensing

39-5-201. Conducting business without license a misdemeanor.

39-5-202. Application for license or renewal.
39-5-203. Grounds for denial, suspension, or revocation of license.
39-5-204. License fees.
39-5-205. Disposition of license fees.
39-5-206. Bond of licensee.
39-5-207. License to be conspicuously displayed.
39-5-208. Expiration of license.
39-5-209. Consent required prior to transfer of license or connection of additional persons with business.

Part 3 — Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept.
39-5-302. Applicant to receive contract — required contents of contract.
39-5-303. Approval of contract by director required.
39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement.
39-5-305. Agency not to induce employee to quit or employer to discharge.
39-5-306. Agency not to refer applicant where strike or lockout exists.
39-5-307. Agency to reconfirm job opening.
39-5-308. When agency may charge a fee.
39-5-309. Maximum fee allowable.
39-5-310. Payment of fee when applicant referred by two agencies.
39-5-311. Fees to be returned in certain cases.
39-5-312. Agency not to share fees with employer.

Part 4 — Investigations and Enforcement

39-5-401. Investigative powers of director.
39-5-402. Department to forward complaints to agency involved or agency association.
39-5-403. Referral of violations to prosecuting attorneys — restraining actions.
39-5-404. Written assurance of discontinuance.
39-5-405. Civil penalty for violating court order.
39-5-406. Jurisdiction over nonresidents.

Part 1

General Provisions

39-5-101. Short title. This chapter shall be known and cited as "The Employment Agency Act".

History: En. Sec. 1, Ch. 430, L. 1971; R.C.M. 1947, 41-1417.

39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, or the Montana state employment agency.

(2) "Temporary service contractors" means any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" means the commissioner of the department of labor and industry.

(7) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes.

History: En. Sec. 2, Ch. 430, L. 1971; R.C.M. 1947, 41-1418; amd. Sec. 1, Ch. 156, L. 1979; amd. Sec. 25, Ch. 397, L. 1979.

39-5-103. Administration — rules. The director shall administer the provisions of this chapter and shall issue from time to time reasonable rules for enforcing and carrying out the provisions and purposes of this chapter.

History: En. Sec. 7, Ch. 430, L. 1971; R.C.M. 1947, 41-1423(1).

39-5-104. Provisions of chapter exclusive. The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(1).

39-5-105. Power of political subdivision to license for revenue purposes not affected. This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state to provide for the licensing of private employment agencies solely for revenue purposes.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(2).

Part 2

Licensing

39-5-201. Conducting business without license a misdemeanor. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter.

History: En. Sec. 8, Ch. 430, L. 1971; R.C.M. 1947, 41-1424.

39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the director a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license. The application must be signed by the applicant and sworn to before a notary public and must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them before a notary public.

(4) The application must also state whether or not the applicant, at the time of making the application or at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses must be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971; R.C.M. 1947, 41-1426; amd. Sec. 26, Ch. 397, L. 1979.

39-5-203. Grounds for denial, suspension, or revocation of license. The director may by order deny, suspend, or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) was previously the holder of a license issued under this chapter which was revoked for cause and never reissued by the director or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) has been found guilty of any felony within the past 5 years involving moral turpitude or for any misdemeanor concerning fraud or conversion or suffering any judgment in any civil action involving willful fraud, misrepresentation, or conversion;

(3) has made a false statement of a material fact in his application or in any data attached thereto;

(4) has violated any provisions of this chapter or failed to comply with any rule issued by the director pursuant to this chapter.

History: En. Sec. 13, Ch. 430, L. 1971; R.C.M. 1947, 41-1429.

39-5-204. License fees. The following fees shall be charged by the director to those parties licensed as employment agencies:

(1) original applications, $100;

(2) renewal per year, $100;

(3) branch license, both original and renewal, $100;
(4) transfer of license, $25;
(5) approval of amended or new contracts, $15 per contract.

History: En. Sec. 14, Ch. 430, L. 1971; R.C.M. 1947, 41-1430.

39-5-205. Disposition of license fees. All license fees shall revert to department of labor and industry to be used for administration of this chapter.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(3).

39-5-206. Bond of licensee. Before conducting any business as an employment agency, each licensee shall file with the director a surety bond in the sum of $2,000 running to the state of Montana for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule adopted by the director pursuant to 39-5-103.

History: En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975; R.C.M. 1947, 41-1425.

39-5-207. License to be conspicuously displayed. Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(1).

39-5-208. Expiration of license. An employment agency license shall expire June 30.

History: En. Sec. 11, Ch. 430, L. 1971; R.C.M. 1947, 41-1427.

39-5-209. Consent required prior to transfer of license or connection of additional persons with business. No license granted pursuant to this chapter shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected if the person in question had been mentioned therein.

History: En. Sec. 12, Ch. 430, L. 1971; R.C.M. 1947, 41-1428.

Part 3

Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept. (1) Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited, the name and address of the applicant, kind of position ordered by the employer, kind of position accepted by the applicant, probable duration of the employment, if known, rate of wage or salary to be paid the applicant, amount of the employment agency's fee, dates and amounts of refund, if any, and reason for such refund, and the contract agreed to between the agency and applicant.

(2) Unless otherwise provided by rules adopted by the director, such records shall be maintained for a period of 3 years from the date in which they are made.

History: **En. Sec. 3, Ch. 430, L. 1971; R.C.M. 1947, 41-1419(part).**

39-5-302. Applicant to receive contract — required contents of contract. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) the name, address, and telephone number of the employment agency;
(2) trade name, if any;
(3) the date of the contract;
(4) the name of the applicant;
(5) the amount of the fee to be charged the applicant;
(6) a notice in eight-point boldface type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point boldface type or larger. The notice shall read as follows: "This is a contract. If you accept employment with any employer through (name of employment agency), you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: **En. Sec. 4, Ch. 430, L. 1971; R.C.M. 1947, 41-1420.**

39-5-303. Approval of contract by director required. Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, misrepresentative, or attempts to charge an unreasonable fee or is in violation of this chapter.

History: **En. Sec. 5, Ch. 430, L. 1971; R.C.M. 1947, 41-1421(part).**

39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement. No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(4).**

39-5-305. Agency not to induce employee to quit or employer to discharge. No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee, nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(3).**

39-5-306. Agency not to refer applicant where strike or lockout exists. No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment if such licensee has knowledge that such condition exists.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(5).

39-5-307. Agency to reconfirm job opening. Prior to referring an applicant with the prospective employer for employment, the employment agency shall reconfirm that the job opening does still exist and document this on the job order.

History: En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975; R.C.M. 1947, 41-1422.

39-5-308. When agency may charge a fee. (1) No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in 39-5-302 and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment.

(3) No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: (1)En. Sec. 15, Ch. 430, L. 1971; Sec. 41-1431, R.C.M. 1947; (2)En. Sec. 17, Ch. 430, L. 1971; Sec. 41-1433, R.C.M. 1947; (3)En. Sec. 5, Ch. 430, L. 1971; Sec. 41-1421, R.C.M. 1947; R.C.M. 1947, 41-1421(part), 41-1431, 41-1433(2).

39-5-309. Maximum fee allowable. (1) (a) No employment agency shall impose a fee in excess of 10% of the first month's gross income paid to any person placed for employment which lasts no longer than 90 days if employment is terminated by the employer through no fault of the applicant.

(b) If the applicant resigns after starting employment or is discharged through his own fault after 30 days of employment, the applicant shall pay the full fee, provided that an adjustment is not reached within 15 days from the last day worked.

(c) If the applicant resigns or terminates within 30 days, the applicant shall not pay in excess of 10% of the total gross income received.

(2) (a) No employment agency shall impose a fee in excess of the percentage of the annual income based on the first month's gross income to any person placed for employment as provided for in the following schedule:

Schedule of Placement Fees

Monthly Income	Percent of First Full Month's Gross Income
Less than $200	30%
$200 to $224	35%
$225 to $299	40%
$300 to $349	50%
$350 to $499	60%
$500 to $649	65%

$650 to $799	70%
$800 and up	75%

(b) Cost of doing business increases are to be reviewed by the department of labor and industry biannually and any adjustments in rates may be approved by the department accordingly.

History: En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; R.C.M. 1947, 41-1431.1(1), (2).

39-5-310. Payment of fee when applicant referred by two agencies. When an applicant is referred to the same position by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the specific opening, provided that he has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within 10 days of such contract.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(7).

39-5-311. Fees to be returned in certain cases. (1) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within 7 days after demand.

(2) Where, due to no fault of such applicant or because the employee or employment is other than as represented by the employment agency, employment is discontinued within 30 days, then all fees paid pursuant to 39-5-309 by such applicant in excess of the applicable maximum for the period worked shall be returned in cash within 7 days after demand.

(3) Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules adopted pursuant to this chapter shall return the excessive portion of the fee within 7 days after receiving a demand therefor from the director.

History: (1), (2)En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; Sec. 41-1431.1, R.C.M. 1947; (3)En. Sec. 16, Ch. 430, L. 1971; Sec. 41-1432, R.C.M. 1947; R.C.M. 1947, 41-1431.1(3), 41-1432.

39-5-312. Agency not to share fees with employer. No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(6).

Part 4

Investigations and Enforcement

39-5-401. Investigative powers of director. (1) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this chapter.

(3) The director shall have authority to demand and examine at the employment agency's regular place of business all books, documents, and records in its possession for inspection.

History: (1), (2)En. Sec. 7, Ch. 430, L. 1971; Sec. 41-1423, R.C.M. 1947; (3)En. Sec. 3, Ch. 430, L. 1971; Sec. 41-1419, R.C.M. 1947; R.C.M. 1947, 41-1419(part), 41-1423(2), (3).

39-5-402. Department to forward complaints to agency involved or agency association. Any complaints filed with the department of labor and industry shall be sent to that private employment agency involved or to the Montana private employment agency association.

History: En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975; R.C.M. 1947, 41-1434.1.

39-5-403. Referral of violations to prosecuting attorneys — restraining actions. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter.

History: En. Sec. 18, Ch. 430, L. 1971; R.C.M. 1947, 41-1434; amd. Sec. 27, Ch. 397, L. 1979.

39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business.

History: En. Sec. 19, Ch. 430, L. 1971; R.C.M. 1947, 41-1435; amd. Sec. 28, Ch. 397, L. 1979.

39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general or the county attorney acting in the name of the state may petition for the recovery of civil penalties.

History: En. Sec. 20, Ch. 430, L. 1971; R.C.M. 1947, 41-1436; amd. Sec. 29, Ch. 397, L. 1979.

39-5-406. Jurisdiction over nonresidents. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter, which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

History: En. Sec. 21, Ch. 430, L. 1971; R.C.M. 1947, 41-1437.

CHAPTER 6

APPRENTICESHIP

Part 1 — General Provisions

Section
39-6-101. Duties of department.
39-6-102. Powers of department.
39-6-103. Responsibilities of state and local boards responsible for vocational education.
39-6-104. Local and state joint apprenticeship committees.
39-6-105. Apprenticeship agreements.
39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.
39-6-107. Provisions of chapter voluntary.

Part 1

General Provisions

39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.

(2) Not less than once every 2 years, the department shall make a report through the governor of its activities and findings to the legislature, which shall be made available to the public.

History: (1)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; R.C.M. 1947, 41-1201(b), 41-1202(1) thru (4); amd. Sec. 1, Ch. 272, L. 1979.

39-6-102. Powers of department. (1) The department of labor and industry may accept from the federal government or any agency thereof or from any state agency any funds made available to carry out purposes within the scope of the activities and purposes of the department under this chapter and to use such funds as said department may direct for the purposes for which said funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

History: (1)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; (2)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; R.C.M. 1947, 41-1201(c), 41-1202(part(5)).

39-6-103. Responsibilities of state and local boards responsible for vocational education. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; R.C.M. 1947, 41-1202(part).

39-6-104. Local and state joint apprenticeship committees. (1) Local and state joint apprenticeship committees may be approved in any trade or group of trades in cities or trade areas by the department of labor and industry whenever the apprentice training needs of such trade or group of trades justifies such establishment.

(2) Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees, respectively, or a state joint apprenticeship committee may be approved as or the department may act itself as the joint committee in such trade or group of trades.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, such committee shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities.

History: En. Sec. 3, Ch. 149, L. 1941; R.C.M. 1947, 41-1203.

39-6-105. Apprenticeship agreements. (1) For the purpose of this chapter, an apprenticeship agreement is:

(a) an individual written agreement between an employer and apprentice;

(b) a written agreement between an employer or an association of employers and an organization of employees describing conditions of employment for apprentices; or

(c) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

(2) All such agreements shall conform to the basic standards and other provisions of this chapter.

History: En. Sec. 5, Ch. 149, L. 1941; R.C.M. 1947, 41-1205.

39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements shall contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) such additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which he is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.

History: En. Sec. 4, Ch. 149, L. 1941; R.C.M. 1947, 41-1204; amd. Sec. 2, Ch. 272, L. 1979; amd. Sec. 30, Ch. 397, L. 1979.

39-6-107. Provisions of chapter voluntary. The provisions of this chapter shall apply to a person, firm, corporation, or craft only after such person, firm, corporation, or craft has voluntarily elected to conform with its provisions.

History: En. Sec. 6, Ch. 149, L. 1941; R.C.M. 1947, 41-1206.

CHAPTER 7

WOMEN IN EMPLOYMENT

Part 1 — Duties of Department of Labor and Industry

Section
39-7-101. Legislative policy.

39-7-102. Rules of procedure and practice.
39-7-103. Duties of department.
39-7-104. Department to work in close cooperation with commission on human rights.

Part 2 — Maternity Leave

39-7-201. Definitions.
39-7-202. Regulations.
39-7-203. Unlawful acts of employers.
39-7-204. Reinstatement to job following pregnancy-related leave of absence.
39-7-205. Complaints of violations.
39-7-206. Investigative powers of commissioner.
39-7-207. Findings of fact and decision on complaint.
39-7-208. Individual action.
39-7-209. Court enforcement of commissioner's decision.

Part 1

Duties of Department of Labor and Industry

39-7-101. Legislative policy. This part establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973; R.C.M. 1947, 41-2401.

39-7-102. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this part.

History: En. Sec. 3, Ch. 466, L. 1973; R.C.M. 1947, 41-2403.

39-7-103. Duties of department. The department of labor and industry shall:

(1) conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislature;

(2) direct public attention to critical employment problems confronting women as wives, mothers, homemakers, and workers;

(3) serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters;

(4) cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state;

(5) conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs, and services available to them;

(6) serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services;

(7) encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs;

(8) apply for and receive grants, appropriations, or gifts from any federal, state, or local agency, private foundation, or individual to carry out the purposes of this part.

History: **En. Sec. 2, Ch. 466, L. 1973; R.C.M. 1947, 41-2402.**

39-7-104. Department to work in close cooperation with commission on human rights. It is the intent of the legislature that the functions in the department of labor and industry delineated in this part pertaining to the status of women shall, where appropriate, be performed in close cooperation with the commission on human rights.

History: **En. Sec. 2, Ch. 478, L. 1975.**

Part 2

Maternity Leave

39-7-201. Definitions. (1) "Commissioner" means the commissioner of labor and industry.

(2) "Employer" means any public or private employer.

History: **En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.**

39-7-202. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this part. Rulemaking under this part shall comply with the provisions of the Montana Administrative Procedure Act.

History: **En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.**

39-7-203. Unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties;

(4) retaliate against any employee who files a complaint with the commissioner under the provisions of this part; or

(5) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: **En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1).**

39-7-204. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: **En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2).**

39-7-205. Complaints of violations. (1) A person claiming to be aggrieved by a violation of 39-7-203 or 39-7-204 may make, sign, and file a verified complaint with the commissioner, which shall state the circumstances of the violation and the particulars thereof and shall contain such other information as may be required by the commissioner.

(2) In addition, the commissioner, whenever he has reason to believe that 39-7-203 or 39-7-204 has been or is being violated, may issue a complaint.

History: **En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).**

39-7-206. Investigative powers of commissioner. (1) The commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they consider appropriate to determine whether any person has violated any provision of this part or any regulation issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

History: **En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.**

39-7-207. Findings of fact and decision on complaint. (1) Within 60 days of the receipt of a complaint, the commissioner shall state his findings of fact and decision.

(2) If, upon all the evidence, the commissioner finds that a respondent has engaged in a violation of 39-7-203 or 39-7-204, he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay to the complainant the damages resulting from the violation.

(3) If, upon all the evidence, the commissioner finds that the respondent has not engaged in a violation of 39-7-203 or 39-7-204, he shall state his findings of fact and shall dismiss the complaint.

History: **En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).**

39-7-208. Individual action. Nothing in this part shall preclude an individual from prosecuting a private action in the district court alleging violation of the provisions of this part or any other law.

History: **En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.**

39-7-209. Court enforcement of commissioner's decision. (1) A decision by the commissioner pursuant to 39-7-207 may be enforced by the district court if the commissioner applies to the court, within 60 days from date of decision, for an order enforcing the decision and if the time provided to initiate judicial review by the employer has passed pursuant to Title 2, chapter 4, part 7.

(2) The commissioner shall apply to the district court of the county in which the employer has its principal place of business or in the first judicial district of the state.

(3) A proceeding under this section is not a review of the merits of the commissioner's decision.

History: **En Sec. 1, Ch. 286, L. 1979.**

Compiler's Comments

Codification. Sec. 2, Ch. 286, L. 1979, provided: "It is intended that section 1 be codified as an integral part of Title 39, chapter 7, part 2, and the provisions of Title 39, chapter 7, part 2, apply to section 1."

CHAPTERS 8 THROUGH 30

RESERVED

CHAPTER 31

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 1 — General Provisions

Section
39-31-101. Policy.
39-31-102. Chapter not a limit on legislative authority.
39-31-103. Definitions.
39-31-104. Rules.
39-31-105. Administrative procedure act applicable.
39-31-106. Board authorized to subpoena witnesses and administer oaths.
39-31-107. Service of subpoenas, notices of hearing, and other process.
39-31-108. Counsel for public parties to litigation.

Part 2 — Public Employee Self Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization.
39-31-202. Board to determine appropriate bargaining unit — factors to be considered.
39-31-203. Deduction of dues from employee's pay.
39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right.
39-31-205. Designated labor organizations to represent employees without discrimination.
39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification.
39-31-207. Petition on representation question — investigation by board — hearing.
39-31-208. Representation election at direction of board.
39-31-209. Consent election.
39-31-210. Election in twelve-month period following valid election prohibited.
39-31-211. Labor organizations representing employees of the board to be unaffiliated.

Part 3 — Bargaining

39-31-301. Representative of public employer.
39-31-302. Participation by student representative when public employer is board of regents.
39-31-303. Management rights of public employers.
39-31-304. Negotiable items for school districts.
39-31-305. Duty to bargain collectively — good faith.
39-31-306. Collective bargaining agreements.

39-31-307. Mediation of disputes.
39-31-308. Initiation of factfinding — designation of fact finder.
39-31-309. Factfinding proceedings.
39-31-310. Submission of issues to arbitration.
39-31-311. Training of fact finders and arbitrators.

Part 4 — Unfair Labor Practices

39-31-401. Unfair labor practices of public employer.
39-31-402. Unfair labor practices of labor organization.
39-31-403. Remedies for unfair labor practices.
39-31-404. Six-month limitation on unfair labor practice complaint — exception.
39-31-405. Unfair labor practice complaint — notice of hearing — service — answer.
39-31-406. Hearing on complaint — findings — order.
39-31-407. Amendment of complaint.
39-31-408. Modification by board of findings and order.
39-31-409. Court enforcement and review of board order.

Part 1

General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

39-31-102. Chapter not a limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.

(2) (a) "Public employee" means:

(i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) "Public employee" does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (3) of this section;

(iv) a management official, as defined in subsection (4) of this section;

(v) a confidential employee, as defined in subsection (12) of this section;

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer-in-training.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(12) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979.

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).**

39-31-105. Administrative procedure act applicable. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616.**

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).**

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter shall be served as provided by the rules of civil procedure.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3).**

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: **En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.**

Part 2

Public Employee Self Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: **En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).**

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

History: **En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2).**

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: **En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.**

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public

employee, labor organization, and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5).

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification. Certification as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

(1) provisions are made for democratic organization and procedures;

(2) elections are conducted pursuant to adequate standards and safeguards;

(3) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(4) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4).

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En Sec. 2, Ch. 271, L. 1979.

Compiler's Comments

Codification. Sec. 3, Ch. 271, L. 1979, provided: "It is intended that section 2 be codified as an integral part of Title 39, chapter 31, part 2; and the provisions of Title 39, chapter 31, apply to section 2."

Part 3

Bargaining

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

39-31-306. Collective bargaining agreements. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

39-31-309. Factfinding proceedings. (1) The factfinder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the factfinder, the board shall issue subpoenas for hearings conducted by the factfinder. The factfinder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The factfinder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) The cost of factfinding proceedings must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the factfinder from endeavoring to mediate the dispute in which he has been selected or appointed as factfinder.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

Part 4

Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-405. Unfair labor practice complaint — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board or any agent designated by the board for such purposes shall issue and cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(2) The person upon whom the charge is served shall file an answer to the complaint.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).**

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after a complaint is submitted to the hearing officer.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979.**

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).**

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.

CHAPTER 32

COLLECTIVE BARGAINING FOR NURSES

Part 1 — General Provisions

Section
39-32-101. Purpose of chapter.
39-32-102. Definitions.
39-32-103. Rules.
39-32-104. Hearings for determination of appropriate unit.
39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification.
39-32-106. Determination of appropriate bargaining unit.
39-32-107. Evidence required to show status as designated representative.

39-32-108. Determination of status as designated representative.
39-32-109. Improper employment practices.
39-32-110. Unlawful strikes.
39-32-111. Proceedings in district court.

Part 1

General Provisions

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (3) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5).

39-32-103. Rules. The department of labor and industry may adopt and promulgate rules as to times and places for hearing and notice thereof so as to provide adequate notice and opportunity to be heard to all interested parties, as to elections, and so as to carry into effect the provisions of this chapter.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3).

39-32-104. Hearings for determination of appropriate unit. The department of labor and industry may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2) or 39-32-108(1).

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1).

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The department of labor and industry may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the department may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2).**

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the department of labor and industry and said department, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: **En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204.**

39-32-107. Evidence required to show status as designated representative. An employee organization is considered to be the duly designated representative of all the employees in an appropriate unit for the purpose of 39-32-109 if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

History: **En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.**

39-32-108. Determination of status as designated representative. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the department of labor and industry for a determination. The department or its representative shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under 39-32-106, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the department to be authorized by at least 30% of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in

that unit. If more than one employee organization claims to represent employees in that unit, the department may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of 39-32-109.

(3) A determination under this section remains in effect for at least 1 year and until either the health care facility or an employee organization shall apply for a redetermination.

History: En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.

39-32-109. Improper employment practices. It is an improper employment practice for a health care facility to do one or more of the following:

(1) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;.

(3) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(5) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

39-32-111. Proceedings in district court. The department of labor and industry, a health care facility, or an employee organization qualified to apply for an election under 39-32-108 may, in the name of its members or in its name, institute proceedings to restrain the commission of any improper practice listed in 39-32-109 or appeal from any determination by the department. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief or, on appeal, adjudicate whether the department has acted in abuse of discretion or upon arbitrary or discriminatory rules, in which event the court may reverse or modify such determination.

History: **En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.**

CHAPTER 33

GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

Section
39-33-101. Intent of part.
39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
39-33-203. Agreements to procure strikebreakers prohibited.
39-33-204. Advertising for strikebreakers restricted.
39-33-205. Penalties.

Part 1

Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family shall have the right to do any work in his place of business without interference by any union or any member thereof.

History: **En. Sec. 1, Ch. 160, L. 1959; R.C.M. 1947, 41-1801.**

39-33-102. Immediate family defined. "Immediate family" shall include the owner, his spouse, and any children under the age of 18 years.

History: **En. Sec. 3, Ch. 160, L. 1959; R.C.M. 1947, 41-1803.**

39-33-103. Unfair labor practice. Any union or member thereof who shall infringe or interfere with the right of an owner and the members of his immediate family to do any work in his place of business shall be guilty of an unfair labor practice.

History: **En. Sec. 2, Ch. 160, L. 1959; R.C.M. 1947, 41-1802.**

39-33-104. Beer and liquor establishment excepted. Nothing in this part shall apply to an establishment that sells liquor or beer.

History: En. Sec. 4, Ch. 160, L. 1959; R.C.M. 1947, 41-1804.

39-33-105. Violation. Violation of any of the provisions of this part shall be punishable by a fine of $50.

History: En. Sec. 5, Ch. 160, L. 1959; R.C.M. 1947, 41-1805.

Part 2

Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties. No person, partnership, firm, or officer or agent thereof may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: En. 41-2501 by Sec. 1, Ch. 40, L. 1975; R.C.M. 1947, 41-2501.

39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502.

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.

39-33-204. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.

39-33-205. Penalties. A person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.

CHAPTER 34

ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

Section

39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
39-34-104. Collective bargaining permitted during arbitration.
39-34-105. Strikes limited.
39-34-106. Cost of arbitration.

Part 1

General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board for final and binding arbitration.

History: En. Sec. 1, Ch. 472, L. 1979.

Compiler's Comments

Definition. The reference in this section and the following sections to "board" appears to mean the board of personnel appeals provided for in 2-15-1705.

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: En. Sec. 2, Ch. 472, L. 1979.

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979.

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

History: En. Sec. 4, Ch. 472, L. 1979.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

History: En. Sec. 5, Ch. 472, L. 1979.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

History: En. Sec. 6, Ch. 472, L. 1979.

CHAPTERS 35 THROUGH 50

RESERVED

CHAPTER 51

UNEMPLOYMENT INSURANCE

Part 1 — General Provisions

Section
39-51-101. Short title.
39-51-102. Declaration of state public policy.
39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds.
39-51-104. Chapter to become inoperative if federal act becomes inoperative.
39-51-105. Disbursement of funds if federal act becomes inoperative.
39-51-106. Approval by secretary of labor required for chapter to have effect.

Part 2 — Definitions

39-51-201. General definitions.
39-51-202. Employer defined.
39-51-203. Employment defined.

39-51-204. Exclusions from definition of employment.
39-51-205. Agricultural labor defined.
39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader.

Part 3 — General Administrative Provisions

39-51-301. Administration — duties and powers of division.
39-51-302. Regulations and general and special rules.
39-51-303. Publication and distribution of materials.
39-51-304. Personnel.
39-51-305. Division to appoint appeals referees.
39-51-306. Division to create bureaus.
39-51-307. Division to create state employment service.
39-51-308. Acquisition and disposition of property by division.
39-51-309. Representation of division and state in court.
39-51-310. Function of board.

Part 4 — Financial Administration

39-51-401. Unemployment insurance account — establishment and control.
39-51-402. Unemployment insurance account — state treasurer ex officio custodian — accounts and deposits.
39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception.
39-51-404. Requisition of money from unemployment trust fund for payment of administrative expenses.
39-51-405. Signatures required on warrants.
39-51-406. Unemployment insurance administration account.
39-51-407. Reimbursement of fund by state.

Part 5 — Governmental Cooperation

39-51-501. State-federal cooperation.
39-51-502. Cooperation with other agencies.
39-51-503. Agreements with railroad retirement board.
39-51-504. Reciprocal benefit arrangements.

Part 6 — Records and Reports

39-51-601. Division to maintain wage record.
39-51-602. Method to be used by division in keeping wage records.
39-51-603. Employing unit to keep records and make reports.

Parts 7 through 10 reserved

Part 11 — Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter.
39-51-1102. Election by employing units not otherwise subject to chapter.
39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers.
39-51-1104. Duty and liability of contractor and subcontractor respectively in regard to contributions owed by subcontractor.
39-51-1105. Liability of corporate officers for contributions owed by corporation.
39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.
39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.
39-51-1108. Amount of wages per employee subject to contribution.
39-51-1109. Contribution appeals.
39-51-1110. Refunds to employers.
Sections 39-51-1111 through 39-51-1120 reserved.
39-51-1121. Definitions.
39-51-1122. Treatment of minor irregularities in determination of eligible employer status.

39-51-1123. Rates of contributions.
39-51-1124. Procedure for election to make payments in lieu of contributions.
39-51-1125. Computation of payments in lieu of contributions.
39-51-1126. Termination of election to make payments in lieu of contributions.

Part 12 — Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.
39-51-1206. Division to provide for notification of employers of their classification and contribution rate.
Sections 39-51-1207 through 39-51-1210 reserved.
39-51-1211. Definitions.
39-51-1212. Experience rating for governmental entities.
39-51-1213. Classification of employers for experience rating purposes.
39-51-1214. Benefit payments chargeable to employer experience rating accounts.
39-51-1215. Maintenance of experience rating records.
39-51-1216. Experience rating record voided when account inactive.
39-51-1217. Schedule of rates assigned based on trust fund reserve.
39-51-1218. Rate schedules.
39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit.

Part 13 — Unpaid Contributions

39-51-1301. Penalty and interest on past-due contributions.
39-51-1302. Summary or jeopardy assessment of unpaid contributions.
39-51-1303. Collection of unpaid contributions by civil action.
39-51-1304. Lien for payment of unpaid contributions — levy and execution.
39-51-1305. Priority of payment of contributions due under legal dissolutions or distributions.
39-51-1306. Reciprocity with other states for collection of unpaid contributions.

Parts 14 through 20 reserved

Part 21 — Benefit Eligibility

39-51-2101. Total unemployment — when.
39-51-2102. Week of unemployment — when deemed to commence.
39-51-2103. Payment of benefits.
39-51-2104. General benefit eligibility conditions.
39-51-2105. Qualifying wages.
39-51-2106. Certain wages not to be used in determining benefit eligibility or amount.
39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required.
39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations.
39-51-2109. Payment of benefits to athletes.
39-51-2110. Payment of benefits to aliens.

Part 22 — Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage.
39-51-2202. Partial payment of benefits.
39-51-2203. Reduction of benefits because of amounts received from certain other sources.
39-51-2204. Duration of benefits.
39-51-2205. Continuation of benefits at death of claimant.

Part 23 — Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year.
39-51-2302. Disqualification for leaving work without good cause.
39-51-2303. Disqualification for discharge due to misconduct.
39-51-2304. Disqualification for failure to apply for or to accept suitable work.
39-51-2305. Disqualification when unemployment due to stoppage of work.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits.
39-51-2307. Disqualification because of student status.
39-51-2308. Disqualification because principal occupation is self-employment.

Part 24 — Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations.
39-51-2402. Initial determination — redetermination.
39-51-2403. Decision of appeals referee.
39-51-2404. Appeal to board.
39-51-2405. Prompt payment of claims.
39-51-2406. Continuing jurisdiction of division over claims.
39-51-2407. Procedure for disputed claims to be prescribed by regulation.
39-51-2408. Disputed claim — records of all proceedings to be kept.
39-51-2409. Witness fees.
39-51-2410. Finality of board's decision — judicial review.

Part 25 — Extended Benefits

39-51-2501. Definitions.
39-51-2502. National "on" indicator — when.
39-51-2503. National "off" indicator — when.
39-51-2504. State "on" indicator — when.
39-51-2505. State "off" indicator — when.
39-51-2506. Beginning and termination of extended benefit period — announcement of.
39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits.
39-51-2508. Eligibility requirements for extended benefits.
39-51-2509. Weekly extended benefit amount.
39-51-2510. Total extended benefit amount.

Parts 26 through 30 reserved

Part 31 — Protection of Rights and Benefits

39-51-3101. Protection against self-incrimination.
39-51-3102. Certain agreements in violation of chapter void.
39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation.
39-51-3104. Limitation of fees in claim for benefits — penalty for violation.
39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception.

Part 32 — General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy.
39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty.
39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty.
39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty.
39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed.
39-51-3206. Liability for wrongful or improper receipt of benefits.

Part 1

General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment Insurance Law".

History: En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.

Compiler's Comments

Instructions to code commissioner. Sec. 2, Ch. 57, L. 1979, provided: "The code commissioner is authorized and instructed to change any reference in the Montana code annotated from "unemployment compensation" to "unemployment insurance" except in 7-1-111, 39-51-2306, and 39-51-2501."

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102.

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the division shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: (1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979.

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security

Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: **En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.**

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the division, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year shall be paid to the general fund of the state.

History: **En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979.**

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: **En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.**

Part 2

Definitions

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the 4 quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent

benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter.

(10) "Division" means the employment security division of the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the division may approve.

(13) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment.

History: (1), (14), (18) thru (23)En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; Sec. 87-149, R.C.M. 1947; (2), (4) thru (13), (15) thru (17)En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; Sec. 87-148, R.C.M. 1947; (3)En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; Sec. 87-109, R.C.M. 1947; R.C.M. 1947, 87-109(part), 87-148(a) thru (h), (k) thru (p), 87-149(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 170, L. 1979; amd. Sec. 36, Ch. 397, L. 1979.

39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of $500;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 37, Ch. 397, L. 1979.

39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the division that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed after July 1, 1975, by all individuals, including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 38, Ch. 397, L. 1979.

39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 18 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the division must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(l) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 67, L. 1979; amd. Sec. 39, Ch. 397, L. 1979.

39-51-205. Agricultural labor defined. (1) The term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this section prior to such date and remunerated services performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;

(c) in connection with the production or harvesting of any commodity commonly known as agricultural commodities or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities;

(d) in the employ of the operator of a farm or a group of operators of farms or a cooperative organization of which such operators are members in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural or horticultural commodity, but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

(2) The provisions of subsections (1)(a), (1)(b), (1)(c), and (1)(d) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(3) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(b) such individual is not an employee of such other person within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9).

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9,

Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

Part 3

General Administrative Provisions

39-51-301. Administration — duties and powers of division. (1) It shall be the duty of the division to administer this chapter and it shall have power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the division shall prescribe.

(2) The division shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal which shall be judicially noticed.

(3) The division shall report as provided in 2-7-102. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then-current contributions, which reserve shall be set up by the division in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

(4) Whenever the division believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975; R.C.M. 1947, 87-120.

39-51-302. Regulations and general and special rules. General and special rules may be adopted, amended, or rescinded by the division only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective 10 days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the division and shall become effective in the manner and at the time prescribed by law.

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975; R.C.M. 1947, 87-121.

39-51-303. Publication and distribution of materials. The division shall cause to be printed for distribution to the public the text of this chapter, the division's regulations and general and special rules, annual reports to the governor, and any other material the division deems relevant and suitable and shall furnish the same to any person upon application therefor.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975; R.C.M. 1947, 87-122.

39-51-304. Personnel. (1) Except as otherwise provided, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The division may delegate to any such persons such power and authority as it considers reasonable and proper for the effective administration of this chapter and may in its discretion bond any person handling money or signing checks hereunder.

(2) No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office may be appointed or employed under this chapter.

(3) The division shall hire in accordance with merit system principles adopted by the merit system council.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975; R.C.M. 1947, 87-123; amd. Sec. 40, Ch. 397, L. 1979.

39-51-305. Division to appoint appeals referees. To hear and decide disputed claims, the division shall appoint such impartial appeals referees as are necessary for the proper administration of this chapter, consisting of salaried examiners selected in accordance with 39-51-304. No person shall participate on behalf of the division in any case in which he is an interested party. The division may designate alternates to serve in the absence or disqualification of an appeals referee.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(d).

39-51-306. Division to create bureaus. The division shall establish two coordinate bureaus, the Montana state employment service bureau created pursuant to 39-51-307 and the unemployment insurance bureau. Each bureau shall be responsible to the administrator for the discharge of its distinctive function. Each bureau shall be a separate administrative unit with respect to personnel, budget, and duties except insofar as the division may find that such separation is impracticable.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975; R.C.M. 1947, 87-118.

39-51-307. Division to create state employment service. (1) The division shall create a bureau to be known as the Montana state employment service, which bureau shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended. The bureau shall be administered by a full-time salaried director.

(2) The division shall be charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are hereby accepted by this state in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The employment security division is hereby designated and constituted the agency of this state for the purpose of said act. The division is directed to appoint the personnel of the Montana state employment service.

(4) For the purpose of establishing and maintaining free public employment offices, the division is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization and as a part of any such agreement the division may accept money, services, or quarters as a contribution to the employment service account.

History: En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975; R.C.M. 1947, 87-132.

39-51-308. Acquisition and disposition of property by division. (1) Subject to the approval of the department of administration, the division may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana.

(2) Subject to the approval of the department of administration, the division may sell any equipment, supplies, or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment insurance administration fund.

(3) In the event the duties or any part thereof of the division shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the division, with the approval of the department of administration, may lease such equipment and real property to the federal government or such agency, but the title thereto shall remain in the state of Montana.

History: En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977; R.C.M. 1947, 87-130; amd. Sec. 2, Ch. 57, L. 1979.

39-51-309. Representation of division and state in court. (1) In any civil action to enforce the provisions of this chapter the division and the state may be represented by any qualified attorney who is employed by the division and is designated by it for this purpose or, at the division's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the county attorney of the county wherein the crime was committed.

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975; R.C.M. 1947, 87-146; amd. Sec. 41, Ch. 397, L. 1979.

39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(4).

Part 4

Financial Administration

39-51-401. Unemployment insurance account — establishment and control. There is hereby established separate and apart from all public money or funds of this state an account in the agency fund known as the unemployment insurance account, which shall be administered by the division exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance account in the agency fund. All money in the account shall be mingled and undivided. This account shall consist of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the account;

(3) any property or securities acquired through the use of money belonging to the account;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368, L. 1975; R.C.M. 1947, 87-111; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 42, Ch. 397, L. 1979; amd. Sec. 17, Ch. 685, L. 1979.

39-51-402. Unemployment insurance account — state treasurer ex officio custodian — accounts and deposits. (1) The state treasurer is the ex officio treasurer and custodian of the unemployment insurance account and shall administer such account in accordance with the directions of the division and shall issue his warrants upon it in accordance with such regulations as the division shall prescribe. He shall maintain within the account three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance account, upon receipt thereof by the division, must be forwarded to the treasurer who shall immediately deposit it in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the division. After clearance thereof, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the unemployment insurance account.

(5) The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment insurance account in an amount fixed by the division and in a form prescribed by law or approved by the attorney general. Premiums for the bond shall be paid from the unemployment insurance administration account.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975; R.C.M. 1947, 87-112; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 43, Ch. 397, L. 1979.

39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the division, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter.

(2) The division shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account.

(3) Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits during succeeding periods or, in the discretion of the division, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(a).

39-51-404. Requisition of money from unemployment trust fund for payment of administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the four preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such five 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the fourth preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration fund but, until expended, shall remain a part of the unemployment insurance fund.

(3) The division shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(b); amd. Sec. 2, Ch. 57, L. 1979.

39-51-405. Signatures required on warrants. All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a member of the division or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(c).

39-51-406. Unemployment insurance administration account. (1) There is hereby created an account in the federal and private revenue fund to be known as the unemployment insurance administration account. All moneys which are deposited, appropriated, or paid into this account are hereby appropriated and made available to the division. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of such other legislation as shall be specifically delegated to the division for administration by the legislature.

(2) All moneys received and deposited in said account for administration expense from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account shall consist of:

(a) all moneys received from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act, as amended;

(b) all moneys appropriated by the state from the general fund for the purpose of administering this chapter;

(c) all interest and penalties collected on past due contributions as provided by 39-51-1301; and

(d) all moneys, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency thereof;

(ii) this state or any agency thereof;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 shall remain part of the unemployment insurance account and shall be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this account shall not lapse at any time, but shall be continuously available to the division for the expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment insurance administration account in an amount to be fixed by the division and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment insurance account under 39-51-402 shall be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code shall be taken to mean the unemployment insurance administration account in the federal and private revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979.

39-51-407. Reimbursement of fund by state. (1) This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received after July 1, 1941, from the United States or any agency thereof under Title III of the Social Security Act, any unencumbered balances in the unemployment insurance administration fund as of that date, any money thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the unemployment insurance division and used only for purposes approved by the secretary of labor. The division shall, if necessary, promptly report to the governor and the governor to the legislature the amount required for such replacement.

(2) This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975; R.C.M. 1947, 87-134; amd. Sec. 2, Ch. 57, L. 1979.

Part 5

Governmental Cooperation

39-51-501. State-federal cooperation. (1) In the administration of this chapter, the division shall:

(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;

(b) make such reports in such form and containing such information as the secretary of labor may from time to time require and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and

(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

(2) The division shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in such manner as may be deemed advisable and expedient in order to carry out the purpose of this chapter.

(3) The division is hereby authorized and empowered to perform any and all acts, including the execution of agreements and contracts which may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the division in its discretion deems it advisable to perform such acts.

(4) Upon request therefor, the division shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and

employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975; R.C.M. 1947, 87-128; amd. Sec. 2, Ch. 57, L. 1979.

39-51-502. Cooperation with other agencies. (1) The division shall afford reasonable cooperation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment.

(2) The division may make and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs and the relative desirability of state rather than national action in any such field.

(3) The division shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment insurance funds or state unemployment insurance and employment security programs or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975; R.C.M. 1947, 87-131; amd. Sec. 2, Ch. 57, L. 1979.

39-51-503. Agreements with railroad retirement board. The division is hereby authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of Montana state employment service facilities and to make available to the railroad retirement board the records of the division relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094). Any money received by the division from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of state employment service facilities shall be paid into and credited the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975; R.C.M. 1947, 87-116; amd. Sec. 2, Ch. 57, L. 1979.

39-51-504. Reciprocal benefit arrangements. (1) The division is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the division finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The division shall participate in any arrangements, approved by the U.S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:

(a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;

(b) such combining of wages will not involve the duplicate use of such wage credits; and

(c) such other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the division finds will be fair and reasonable as to all affected interests, and whereby the division will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the division finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this chapter.

(3) The division is hereby authorized to make to other state or federal agencies reimbursements from or to the unemployment insurance fund in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975; R.C.M. 1947, 87-129; amd. Sec. 2, Ch. 57, L. 1979.

Part 6

Records and Reports

39-51-601. Division to maintain wage record. The division shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(f).

39-51-602. Method to be used by division in keeping wage records. Wage records kept by the division for the purposes of this chapter prior to January 1, 1941, shall be kept on the basis of wages payable and wage records kept by the division for the purposes of this chapter after January 1, 1941, shall be kept on the basis of wages paid.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(part).

39-51-603. Employing unit to keep records and make reports. (1) Each employing unit shall keep true and accurate work records containing such information as the division may prescribe. Those records shall be open to inspection and shall be subject to being copied by the division or its authorized representative at any reasonable time and as often as may be necessary.

(2) The division and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the division considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the division who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both.

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975; R.C.M. 1947, 87-124.

Parts 7 through 10 reserved

Part 11

Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter. (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the division prior to the last day of February of such year a written application for termination of coverage and the division finds that the total wages payable for employment by said employer

in the preceding calendar year did not exceed $500. For the purpose of this subsection, the two or more employing units mentioned in subsection (2) or (3) of 39-51-202 shall be treated as a single employing unit.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(a), (b).

39-51-1102. Election by employing units not otherwise subject to chapter. An employing unit not otherwise subject to this chapter or any employing unit for which services are performed that do not constitute employment as defined in this chapter may file with the division a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if at least 30 days prior to such January 1 such employing unit has filed with the division a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(c).

39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201(19), paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the division for the fund in accordance with such regulations as the division may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 18, Ch. 685, L. 1979.

39-51-1104. Duty and liability of contractor and subcontractor respectively in regard to contributions owed by subcontractor. (1)

Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all contributions, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the division, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all contributions, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(3).

39-51-1105. Liability of corporate officers for contributions owed by corporation. When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the division shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any contributions due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the contributions thereafter accruing.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(4).

39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.

39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.

39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including $4,200 by an employer to an employee with respect to employment during the calendar years 1972, 1973, 1974, and the first calendar quarter of year 1975.

(2) For the second calendar quarter of the calendar year 1975 through the fourth calendar quarter of 1977, the taxable wage base for each year is $4,800.

(3) Effective January 1, 1978, and thereafter the taxable wage base for each year is $6,000.

(4) For the first calendar quarter of 1979 and thereafter, the taxable wage base for each year is the greater of:

(a) 75% of the average annual wage as determined under 39-51-2201(2) (rounded to the nearest $100 not to exceed an increase of $200 over the taxable wage base of the preceding year) during the calendar year immediately preceding the most recently completed calendar year; or

(b) the amount of taxable wage base specified in the Federal Unemployment Tax Act.

(5) Notwithstanding subsection (4) the taxable wage base for 1979 shall be $7,400.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(d); amd. Sec. 8, Ch. 685, L. 1979.

Compiler's Comments

Effective date and retroactive application. Sec. 22, Ch. 685, L. 1979, provided: "Section 39-51-1108, MCA, is effective upon passage and approval and shall be considered to apply as of January 1, 1979." Approved May 9, 1979. Apparently the reference to section 39-51-1108, MCA, is intended to indicate that section as amended by section 8 of Chapter 685.

39-51-1109. Contribution appeals. Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy is considered the decision of the division. The division or the deputy conducting the review may refer the matter to an appeals referee, may decide the application for review on the basis of such facts and information as may be obtained, or may hear argument to secure further facts. After such review, notice of the decision must be given to the employing unit. Such decision made pursuant to such review is considered the final decision of the division unless the employing unit or any other such interested party, within 5 calendar days after delivery of such notification or within 7 calendar days after such notification was mailed to his last-known address, files an appeal from this decision. Such appeal will be referred to an appeals referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in 39-51-2403.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(e); amd. Sec. 44, Ch. 397, L. 1979.

39-51-1110. Refunds to employers. (1) If not later than 3 years after the date on which any contributions or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof because such adjustment cannot be made and the division shall determine that such contributions or interest or any portion thereof was erroneously collected, the division shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him or, if such adjustment cannot be made, the division shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the division's own initiative.

(2) If the division shall determine that an employer has paid contributions to this state under this chapter when such contributions should have been paid to another state under a similar act of such other state, transfer of such contributions to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all contributions required under this chapter from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975; R.C.M. 1947, 87-138.

39-51-1111 through 39-51-1120 reserved.

39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means June 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means September 30 immediately following the computation date. The division may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.

(4) "Division" means the employment security division of the department of labor and industry.

(5) "Eligible employer" means a covered employer who has:

(a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;

(b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the division;

(c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;

(d) established a record of accumulated contributions in excess of benefits charged to his account; and

(e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar quarters ending on June 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in excess of benefits charged to his account but has not filed all required payroll reports or paid contributions by the cutoff date for any of the quarters in the 3 fiscal years immediately preceding the computation date.

History: En. Secs. 1, 2, Ch. 685, L. 1979.

Compiler's Comments

Codification. Sec. 20, Ch. 685, L. 1979, provided: "It is intended that sections 1 through 7 and 9 through 16 of this act be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, apply to sections 1 through 7 and 9 through 16 of this act." The reference to part 21 is apparently a typographical error. Part 11 is more appropriate for sections 1 through 7, and they have been codified as 39-51-1121 through 39-51-1126. Section 1 provides definitions and specifically states that they apply to part 11. The Code Commissioner codified sections 9 through 16 in part 12 as 39-51-1212 through 39-51-1219 because part 12 more specifically deals with the subject matter. Section 39-51-1211 was added by the Code Commissioner to ensure that the definitions in section 1 apply.

39-51-1122. Treatment of minor irregularities in determination of eligible employer status. For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the division that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

History: En. Sec. 3, Ch. 685, L. 1979.

39-51-1123. Rates of contributions. All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the division.

History: En. Sec. 4, Ch. 685, L. 1979.

39-51-1124. Procedure for election to make payments in lieu of contributions. (1) Any nonprofit organization defined in 39-51-1103 or governmental entity electing to become liable for payments in lieu of contributions must file a written notice of its election with the division not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election shall be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103 or governmental entity which has been paying contributions for at least 2 taxable years may change to payments in lieu of contributions by filing a written notice to that effect with the division within 30 days before the beginning of the taxable year for which the change is effective.

History: En. Sec. 5, Ch. 685, L. 1979.

39-51-1125. Computation of payments in lieu of contributions. (1) Qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half of the amount of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the division monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A nonprofit organization which elects to make payments in lieu of contributions into the unemployment insurance fund is not liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services, as defined in 39-51-204(3)(c), to the extent that the unemployment insurance fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

History: En. Sec. 6, Ch. 685, L. 1979.

39-51-1126. Termination of election to make payments in lieu of contributions. (1) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of such election by filing a written notice with the division not later than 30 days prior to the beginning of the taxable year for which the termination is effective.

(2) If a nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the division may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination is effective for that and the next taxable year.

History: En. Sec. 7, Ch. 685, L. 1979.

Part 12

Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.

39-51-1206. Division to provide for notification of employers of their classification and contribution rate. The division shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the division for a redetermination or hearing thereon within 30 days after receipt of such notice.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955;

amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part).

39-51-1207 through 39-51-1210 reserved.

39-51-1211. Definitions. The definitions set forth in 39-51-1121 apply to this part.

History: En. 39-51-1211 by Code Commissioner, 1979.

Compiler's Comments

Codification. Sec. 20, Ch. 685, L. 1979, provided: "It is intended that sections 1 through 7 and 9 through 16 of this act be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, apply to sections 1 through 7 and 9 through 16 of this act." The reference to part 21 is apparently a typographical error. Part 11 is more appropriate for sections 1 through 7, and they have been codified as 39-51-1121 through 39-51-1126. Section 1 provides definitions and specifically states that they apply to part 11. The Code Commissioner codified sections 9 through 16 in part 12 as 39-51-1212 through 39-51-1219 because part 12 more specifically deals with the subject matter. Section 39-51-1211 was added by the Code Commissioner to ensure that the definitions in section 1 apply.

39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

History: En. Sec. 9, Ch. 685, L. 1979.

39-51-1213. Classification of employers for experience rating purposes. (1) The division shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of his record as of July 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below for the calendar year 1980 and for each calendar year thereafter:

(a) Each employer is given an "experience factor" which is contributions paid minus benefits charged on each employer's account since July 1, 1976, divided by his average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of his taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite his rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of his taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1213.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which he would have occupied had his taxable payroll amount or experience factor as changed been used in determining his position in the first instance, but such change does not affect the position or

rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

History: **En. Sec. 10, Ch. 685, L. 1979.**

Compiler's Comments

Correction. The reference in subsection (4)(c) to 39-51-1213 appears to be an error and should apparently be 39-51-1214.

Retroactive repeal of former law. Sec. 21, Ch 685, L. 1979, provided in part: "Section 39-51-1204, MCA, is repealed retroactive to January 1, 1979."

39-51-1214. Benefit payments chargeable to employer experience rating accounts. Benefits paid prior to June 30, with respect to benefit years commencing with July 1, 1976, and thereafter, shall, as of June 30 of each year preceding the calendar year for which a covered employer's contribution rate is effective, be charged to the account of the covered employer, except cost reimbursement and governmental employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits. After June 30, 1979, no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(1) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(2) if paid in accordance with the extended benefit program triggered by either national or state indicators.

History: **En. Sec. 11, Ch. 685, L. 1979.**

39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid for covered employment prior to the cutoff date. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account. Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

History: **En. Sec. 12, Ch. 685, L. 1979.**

39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because he has ceased to do business or because he has not covered employment for a period of 3 years becomes a covered employer, he is considered a new employer and he is not to be credited with his previous experience for the purpose of computing any future "experience factor".

History: **En. Sec. 13, Ch. 685, L. 1979.**

39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of December 31 prior to the rate year to total wages in covered employment for the 12-month period prior to the computation date, except that a recomputation based on the April 1 trust fund balance will be made each year and, if the recomputed ratio results in an increase of 0.4% or more, all employer rates will increase 0.2% beginning July 1 for the remainder of the year.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible, unrated, and deficit employers, based upon their experience as defined in this section, except that for calendar year 1979, the tax rate Schedule X shall be applied as provided for in [39-51-1202].

History: En. Sec. 14, Ch. 685, L. 1979.

Compiler's Comments

Correction. The Code Commissioner has added brackets around "39-51-1202" in subsection (3) because that section was repealed by Ch. 685, L. 1979, the same act that enacted 39-51-1217.

39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0150)	(.0145)	(.0140)	(.0130)
Average Tax Rate	1.3	1.5	1.7	1.9
Rate Class	Contribution Rates For Eligible Employers			
1	0.2%	0.3%	0.5%	0.7%
2	0.4	0.6	0.8	1.0
3	0.7	0.9	1.1	1.3
4	1.0	1.2	1.4	1.6
5	1.3	1.5	1.7	1.9
6	1.6	1.8	2.0	2.2
7	1.9	2.1	2.3	2.5
Contribution Rates For Unrated Employers:	2.1%	2.3%	2.5%	2.7%
Rate Class	Contribution Rates For Deficit Employers			
1	2.2%	2.4%	2.6%	2.8%
2	2.4	2.6	2.8	3.0
3	2.6	2.8	3.0	3.2
4	2.8	3.0	3.2	3.4
5	3.0	3.2	3.4	3.6
6	3.2	3.4	3.6	3.8

SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0120)	(.0110)	(.0095)	(.0075)	(.0050)	(.....)
2.1	2.3	2.5	2.7	2.9	3.1
Contribution Rates For Eligible Employers					
0.9%	1.1%	1.3%	1.5%	1.7%	1.9%

1.2	1.4	1.6	1.8	2.0	2.2
1.5	1.7	1.9	2.1	2.3	2.5
1.8	2.0	2.2	2.4	2.6	2.8
2.1	2.3	2.5	2.7	2.9	3.1
2.4	2.6	2.8	3.0	3.2	3.4
2.7	2.9	3.1	3.3	3.5	3.7

Contribution Rates For Unrated Employers:

2.9%	3.1%	3.3%	3.5%	3.7%	3.9%

Contribution Rates For Deficit Employers

3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
3.2	3.4	3.6	3.8	4.0	4.2
3.4	3.6	3.8	4.0	4.2	4.4
3.6	3.8	4.0	4.2	4.4	4.4
3.8	4.0	4.2	4.4	4.4	4.4
4.0	4.2	4.4	4.4	4.4	4.4

History: En. Sec. 15, Ch. 685, L. 1979.

39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit. (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the division finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the division, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever such portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the division, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(3) (a) The 90-day period may be extended at the discretion of the division.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management or ownership or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer shall be based on estimates of the applicable payrolls.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year.

History: **En. Sec. 16, Ch. 685, L. 1979.**

Part 13

Unpaid Contributions

39-51-1301. Penalty and interest on past-due contributions. (1) Contribution reports not made and filed on the date on which they are due, as provided by subsections (1) and (2) of 39-51-1103, shall be subject to a penalty assessment of $10. Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month.

(2) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(3) When failure to pay contributions in time and before delinquency was not caused by willful intent of the employer and for good cause shown, the division may abate the penalty for late filing or late payment or both. Interest shall also be subject to abatement.

History: **En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979.**

39-51-1302. Summary or jeopardy assessment of unpaid contributions. (1) If any employer fails to file a report or return as required under this chapter or the regulations of the division adopted thereunder within the time specified, the division may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of contributions due and owing to the fund upon the basis of such information as the division may be able to obtain, and thereupon the same shall be collected the same as other reports and contributions due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the division shall immediately notify the employer in writing by personal service or by certified or registered mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the division.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the division and notice thereof mailed to the employer. At such hearing, the facts ascertained by the division shall be conclusive and the division may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the division and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

History: **En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec. 28, Ch. 368, L. 1975; R.C.M. 1947, 87-140.**

39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due must be collected by civil action in the name of the division, Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action.

(2) Civil actions brought under this section to collect contributions or interest thereon from an employer must be heard by the court at the earliest possible date and are entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(3) An action for the collection of contributions due must be brought within 5 years after the due date of such contributions or it is barred.

History: **En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(1); amd. Sec. 46, Ch. 397, L. 1979.**

39-51-1304. Lien for payment of unpaid contributions — levy and execution. (1) If any contributions payable by an employer under this chapter or any portion thereof is not paid within 25 days after the same becomes due, the division may issue a certificate under its official seal, setting forth the amount of contributions due and interest accrued, directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the employer owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest, and costs of executing the same and to return such certificates to the division and pay to the division the money collected by virtue thereof by a time to be therein specified, not more than 90 days from the date of the certificate.

(2) The sheriff shall, within 5 days after the receipt of the certificate, file with the clerk of the district court of his county a copy thereof and thereupon the clerk of the district court shall enter in the judgment docket in the column for judgment debtors the name of the employer mentioned in the certificate and in the appropriate columns the amount of contributions due and the penalties for which the certificate is issued and the date when such copy is filed, and thereupon the amount of such certificate so docketed shall become a lien upon the title to and interest in real property or chattels real of the employer against whom it is filed in the same manner as a judgment docketed in the office of such clerk.

(3) The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record and shall be entitled to the same fees for his services in executing the certificate, to be collected in the same manner.

History: En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975; R.C.M. 1947, 87-139.

39-51-1305. Priority of payment of contributions due under legal dissolutions or distributions. (1) In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding.

(2) In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition under the Federal Bankruptcy Act, contributions then or thereafter due shall be entitled to priority of payment as a debt due the sovereign power as provided by the Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 840).

History: En. Subd. (c), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; R.C.M. 1947, 87-137.

39-51-1306. Reciprocity with other states for collection of unpaid contributions. (1) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state.

(2) The division is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such contributions and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance contributions, penalties, and interest shall be conclusive evidence of such authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(2); amd. Sec. 2, Ch. 57, L. 1979.

Parts 14 through 20 reserved

Part 21

Benefit Eligibility

39-51-2101. Total unemployment — when. An individual shall be deemed totally unemployed in any week during which he performed no work and earned no wages or a week of less than full-time work with wages of less than 2 times his weekly benefit amount. No individual is unemployed in any week that he is self-employed.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(1).

39-51-2102. Week of unemployment — when deemed to commence. An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the division may by regulation otherwise prescribe.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(2).

39-51-2103. Payment of benefits. (1) Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed.

(2) All benefits shall be paid through public employment offices in the state or other agencies designated by the division in accordance with such rules as the division may prescribe.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part).

39-51-2104. General benefit eligibility conditions. An unemployed individual is eligible to receive benefits for any week of total unemployment within his benefit year only if the division finds that:

(1) he has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the division

may prescribe, except that the division may, by regulation, prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may register and report for work by mail or through other governmental agencies;

(2) he has made a claim for benefits in accordance with the provisions of 39-51-2401;

(3) he is able to work and is available for work and is seeking work; provided, however, that no claimant is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

(4) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(a) thru (d); amd. Sec. 47, Ch. 397, L. 1979.

39-51-2105. Qualifying wages. (1) To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period an amount totaling not less than 1 ½ times his base period high quarter wages.

(2) On and after July 1, 1980, to qualify for benefits, an individual must have had at least 20 weeks of work with an average of $50 per week in subject employment in the base period. To qualify for benefits, the total base period wages must be $1,000 or more.

(3) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services:

(a) which were not employment as defined in 39-51-204(1)(a) and (1)(b) at any time during the 1-year period ending December 31, 1975; and

(b) which:

(i) are agricultural labor, as defined in 39-51-203(8), or domestic service, as defined in 39-51-203(9); or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in 39-51-203(5), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in 39-51-203(6), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 688, L. 1979.

39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094) or for services performed for an employer as defined in said act shall not be included for the purposes of determining eligibility or weekly benefit amount under this chapter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part).

39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(e).

39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. Benefits based on service in employment defined in subsections (5) and (6) of 39-51-203 and subsections (2) and (3) of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between 2 successive academic years or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953;

amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(f); amd. Sec. 48, Ch. 397, L. 1979.

39-51-2109. Payment of benefits to athletes. Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(g).

39-51-2110. Payment of benefits to aliens. (1) Effective January 1, 1978, benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h).

Part 22

Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount an amount equal to one twenty-sixth of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest multiple of $1.

(2) On and after July 1, 1980, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. However, such amount shall not be less than the minimum, or more than the maximum weekly benefit amount.

(3) On or before May 31 of each year, the total wages paid by all employ-

ers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of $1, shall be computed to the nearest multiple of $1.

(4) The minimum weekly benefit amount shall be 15% of the average weekly wage.

(5) The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979.

39-51-2202. Partial payment of benefits. Partial payment for a week of unemployment as used in this section shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest dollar.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(A).

39-51-2203. Reduction of benefits because of amounts received from certain other sources. Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and contributed to in whole or in part by a base-period employer. This provision does not apply to the receipt of benefits under the federal Social Security Act, as amended.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(B).

39-51-2204. Duration of benefits. Any otherwise eligible individual shall be entitled during his benefit year to benefits for the total number of weeks appearing in the following table on the line which includes his ratio of total base period earnings to highest quarter base period earnings:

Ratio of Total Base Period Earnings to High Quarter		Weeks' Duration of Benefits
At Least	Less Than	
0	1.25	8
1.25	1.50	10

1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—	26

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(d); amd. Sec. 3, Ch. 688, L. 1979.

39-51-2205. Continuation of benefits at death of claimant. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse or, if there be no surviving spouse, then to the surviving children or, if there be no surviving children, then to the next of kin without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(g).

Part 23

Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year. A disqualification pursuant to the provisions of this part may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(h).

39-51-2302. Disqualification for leaving work without good cause. (1) An individual shall be disqualified for benefits if he has left work without good cause.

(2) He may not be disqualified if the division finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979.

39-51-2303. Disqualification for discharge due to misconduct. An individual shall be disqualified for benefits if he has been discharged:

(1) for misconduct connected with his work or affecting his employment until an individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred.

(2) for gross misconduct connected with his work or committed on the employer's premises, as determined by the division, for a period of 12 months.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979.

39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual is disqualified for benefits if he fails without good cause either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the division. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) During the first 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers wages equal to the prevailing wage for that area in the individual's customary occupation. After 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the prevailing wage.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (c); amd. Sec. 49, Ch. 397, L. 1979; amd. Sec. 6, Ch. 688, L. 1979.

39-51-2305. Disqualification when unemployment due to stoppage of work. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which the division finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(a) he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(3) If the division, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (d).

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) wages in lieu of notice or separation or termination allowance;

(b) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

(c) benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the division may collect such unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e).

39-51-2307. Disqualification because of student status. (1) Effective April 1, 1977, an individual shall be disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution.

(2) Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training approved by the division, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the division by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(3).

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec.

1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f).

39-51-2308. Disqualification because principal occupation is self-employment. Effective April 1, 1977, an individual shall be disqualified for benefits if his principal occupation is self-employment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).

Part 24

Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations. Claims for benefits shall be made in accordance with such regulations as the division may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the division to each employer without cost to him.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a).

39-51-2402. Initial determination — redetermination. (1) A representative designated by the division and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration thereof or shall refer such claim or any question involved therein to an appeals referee who shall make his decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim shall be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 5 days after delivery of such notification or within 7 days after such notification was mailed to his last known address, provided that such period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(b), (c).

39-51-2403. Decision of appeals referee. After a hearing, an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to 39-51-2404 within 5 days after delivery of such notification or within 7 days after such notification was mailed to his last known address, provided that such period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(e).

39-51-2404. Appeal to board. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board. The division will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the division, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to his last known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(g).

39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(f).

39-51-2406. Continuing jurisdiction of division over claims. The division shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel, and amend all orders, findings, and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsections (2) through (6) of 39-51-2410.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).

39-51-2407. Procedure for disputed claims to be prescribed by regulation. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the division or the board for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).

39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).

39-51-2409. Witness fees. Witnesses subpoenaed pursuant to 39-51-2406 through 39-51-2410 shall be allowed fees at a rate fixed by the division. Such fees shall be deemed a part of the expense of administering this chapter.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(b).

39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof, except in the case of the division when such decision becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board. The division shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the division or at the division's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need

not be verified but which shall state the grounds upon which a review is sought, shall be served upon the administrator of the division or the administrator's designee and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the division shall forthwith mail one such copy to each such defendant.

(3) With its answer, the division shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the division seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the division shall enter an order in accordance with such determination.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(c), (d).

Part 25

Extended Benefits

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Extended benefit period" means a period which:

(a) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator; or

(ii) a week for which there is a state "on" indicator; provided, that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(ii) the 13th consecutive week of such period.

(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the division on the basis of his reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the division in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in his eligibility period.

(5) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week; provided, that for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits;

(b) his benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953;

amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2).

39-51-2502. National "on" indicator — when. There is a national "on" indicator for a week if the U.S. secretary of labor determines that for such week and for each of the immediately preceding 12 weeks the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded 4 ½%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).

39-51-2503. National "off" indicator — when. There is a national "off" indicator for a week if the U.S. secretary of labor determines that for such week and for each of the immediately preceding 12 weeks the rate of insured unemployment (seasonally adjusted) for all states was less than 4 ½%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the division determines, in accordance with the regulations of the U.S. secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter:

(1) equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

(2) equaled or exceeded 4%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4).

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the division determines, in accordance with the regulations of the U.S. secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter:

(1) was less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) was less than 4%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5).

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the division shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1).

39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits. Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the division, the provisions of this chapter which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(b).

39-51-2508. Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the division finds that with respect to such week:

(1) he is an exhaustee, as defined in 39-51-2501(6);

(2) he has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c).

39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(d).

39-51-2510. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(e).

Parts 26 through 30 reserved

Part 31

Protection of Rights and Benefits

39-51-3101. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the division or board, the chairman of an appeal tribunal, or any duly authorized representative of either of them or in obedience to the subpoena of the division or board or any member thereof or any duly authorized representative of the division in any cause or proceeding before the division or board on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975; R.C.M. 1947, 87-127.

39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void.

(2) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from such employer shall be void.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by an individual in his employ.

(2) Any employer or officer or agent of an employer who violates any provision of this section or 39-51-3102 shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months or both.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

39-51-3104. Limitation of fees in claim for benefits — penalty for violation. (1) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the division or its representatives or by any court or any officer thereof.

(2) Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the division or its representatives, the board, or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the division or board.

(3) Any person who violates any provision of this section shall, for each such offense, be fined not more than $500 or imprisoned for not more than 6 months or both.

History: En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975; R.C.M. 1947, 87-142.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

History: En. Subd. (c), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-143.

Part 32

General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

(1) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the division, the length of time of the disqualification as herein described to be determined by the division in accordance with the severity of each case; and

(2) required to repay to the division, either directly or as authorized by the division, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully

received by him. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the division's determination that he made false statements, willful nondisclosure, or misrepresentation.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(1).

39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. A person who, in order to obtain or increase for himself or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the division may cause criminal proceedings to be initiated against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(2).

39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(3).

39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(4).

39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(5).

39-51-3206. Liability for wrongful or improper receipt of benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case or while he was disqualified from receiving benefits shall, in the discretion of the division, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the division for the unemployment insurance fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due contributions. An action for collection of overpaid benefits must be brought within 5 years after the date of such overpayment or it is barred.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(6); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 50, Ch. 397, L. 1979.

CHAPTERS 52 THROUGH 70

RESERVED

CHAPTER 71

WORKERS' COMPENSATION

Part 1 — General Provisions

Section
39-71-101. Short title.
39-71-102. Reference to plans.
39-71-103. Compensation provisions.
39-71-104. Court to give liberal construction to chapter.
Sections 39-71-105 through 39-71-115 reserved.
39-71-116. Definitions.
39-71-117. Employer defined.
39-71-118. Employee, worker, and workman defined.

39-71-119. Injury or injured defined.
39-71-120. Independent contractor defined.

Part 2 — Administrative Provisions
Division of Workers' Compensation

39-71-201. Administration fund.
39-71-202. Office of division.
39-71-203. Powers of division.
39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — limitation — effect.
39-71-205. Division authorized to charge certain fees — disposition of.
39-71-206. Legal advisers of division.
39-71-207. Merit system.
39-71-208. Blank forms, minutes, and records.
39-71-209. Publication of reports and bulletins authorized.
39-71-210. Annual report of division — copies for general distribution.
Sections 39-71-211 through 39-71-220 reserved.
39-71-221. Public records of division — right to inspect.
39-71-222. Duties of administrator regarding inspection and examination of records.
39-71-223. Certified copies of public records — fees.
39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt.

Part 3 — Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence.
39-71-302. What included in computing payroll.
39-71-303. Work paid for in property other than money — wages to be determined by division.
39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal.
39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.
39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures.
39-71-307. Employers and insurers to file reports of accidents.
39-71-308. Neglect or refusal of public corporation to file monthly payroll reports — arbitrary assessment by division.
39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted.

Part 4 — Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted.
39-71-402. Extraterritorial application and reciprocity.
39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations.
39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.
39-71-405. Liability of employer who contracts work out.
39-71-406. Deduction from wages of any part of premium a misdemeanor — hospital contributions not prohibited.
39-71-407. Liability of insurers.
39-71-408. Liability as first lien in case of bankruptcy or failure.
39-71-409. Waivers by employee invalid.
39-71-410. Employees bound by plan adopted by employer — election not to be bound by corporate officers.
39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer.
39-71-412. Liability of third party other than employer or fellow employee — additional cause of action.
39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action.
39-71-414. Subrogation.

Part 5 — Uninsured Employers

39-71-501. Definition of uninsured employer.

39-71-502. Creation and purpose of uninsured employers' fund.
39-71-503. Administration of fund.
39-71-504. Funding of fund.
39-71-505. Applicability of other provisions of chapter to fund.
39-71-506. Collection of payments from uninsured employer by suit.
39-71-507. Division to order uninsured employer to cease operations — noncompliance with order a misdemeanor.
39-71-508. Election of uninsured employee to take under the fund or bring action against employer — election binding.
39-71-509. Election to bring action against uninsured employer — limitation of employer's defenses.
39-71-510. Limitation on benefit entitlement under fund.

Part 6 — Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver.
39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed.
39-71-603. Notice of injuries other than death to be submitted within sixty days.
39-71-604. Application for compensation.
39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost.
39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial.
39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information.
39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice.
39-71-609. Denial of claim after payments made or termination of benefits by insurer — fourteen days' notice required.
39-71-610. Termination of benefits by insurer — division order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement.
39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable.
39-71-612. Costs and attorneys' fees payable based on difference between amount paid by insurer and amount later found compensable.
39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance.

Part 7 — Compensation and Benefits Generally

39-71-701. Compensation for injuries producing temporary total disability.
39-71-702. Compensation for injuries producing total permanent disability.
39-71-703. Compensation for injuries causing partial disability.
39-71-704. Payment of medical, hospital, and related services.
39-71-705. Compensation for loss of certain body members or loss of hearing.
39-71-706. Compensation for permanent injury to a member less than loss.
39-71-707. Compensation for loss of vision.
39-71-708. Compensation for disfigurement.
39-71-709. Partial disability benefits — indemnity benefits — election.
Sections 39-71-710 through 39-71-720 reserved.
39-71-721. Compensation for injury causing death.
39-71-722. Who constitutes beneficiary to be determined as of date of accident.
39-71-723. How compensation to be divided among beneficiaries.
39-71-724. Payment of compensation to beneficiary not a resident of United States.
39-71-725. Payment of burial expense.
39-71-726. No compensation after death where death not result of injury.
Sections 39-71-727 through 39-71-735 reserved.
39-71-736. Compensation — from what date paid.
39-71-737. Compensation to run consecutively.
39-71-738. Adjustment of compensation in case of further injuries.
39-71-739. Compensation in case of changes in degree of injury.
39-71-740. Payments — how made in most cases.
39-71-741. Compromise settlements and lump-sum payments — division approval required.
39-71-742. Who may receive payment.

39-71-743. Assignment or attachment of payments.

Part 8 — Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part.
39-71-802. Definitions.
39-71-803. Occupational deafness distinguished from traumatic loss of hearing.
39-71-804. Compensable loss of hearing confined to certain frequencies.
39-71-805. Determining percent of hearing loss.
39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise.
39-71-807. Compensation for wage loss where employee transferred due to occupational deafness.
39-71-808. Compensation for occupational deafness.
39-71-809. Liability of employer for occupational deafness.
39-71-810. Employee to have worked ninety days for employer from whom compensation claimed.
39-71-811. Minimum exposure and noise intensity level required.
39-71-812. Limitation on amount of compensation payable to employee under part.
39-71-813. Limitation provisions applicable — when provisions begin to run.

Part 9 — Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions.
39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers.
39-71-903. Procedure and practice.
39-71-904. Rules for certification.
39-71-905. Certification as vocationally handicapped.
39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with division — effect of failure to file.
39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — employer liability for compensation limited.
39-71-908. Notification of fund of its potential liability under part — review by fund.
39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized.
39-71-910. Procedure for resolving disputes as to liability under part.
39-71-911. Obligation to make payments on behalf of fund not an independent liability.
39-71-912. Reimbursement to be promptly made.
39-71-913. Payments by fund directly to persons entitled.
39-71-914. Conversion of benefits payable from fund to lump sum.

Part 10 — Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation.
39-71-1002. Certification of department's determination to division — review of award.
39-71-1003. Eligibility for benefits under chapter not affected — other expenses payable.
39-71-1004. Industrial accident rehabilitation account.
39-71-1005. Required rehabilitation.

Parts 11 through 20 reserved

Part 21 — Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan.
39-71-2102. Proof of solvency to be filed.
39-71-2103. Employer permitted to carry on business and settle directly with employee.
39-71-2104. Renewal of application.
39-71-2105. Additional proof of solvency — revocation of order.
39-71-2106. Requiring security of employer.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation.
39-71-2108. Failure of employer to pay compensation — duty of division.
39-71-2109. When employer may be relieved from liability.

Part 22 — Compensation Plan Number Two

39-71-2201. Election to be bound by plan.
39-71-2202. Policies made subject to chapter.
39-71-2203. Content of policies — policies subject to approval, change, or revision by division.
39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure.
39-71-2205. Policy remains in effect until canceled or replaced — twenty-day notification of cancellation required.
39-71-2206. Deposits by insurer with division to guarantee payment of liability.
39-71-2207. How insurer relieved from liability.

Part 23 — Compensation Plan Number Three

39-71-2301. Intent and purpose of plan.
39-71-2302. General requirements for electing coverage under plan.
39-71-2303. Manner of electing — contract or policy of insurance — payment of premium.
39-71-2304. Determination of rates and classifications by division.
39-71-2305. Advanced rate for dangerous places of employment.
39-71-2306. State fund authorized to charge interest.
39-71-2307. Cancellation of coverage under plan for default — thirty days' notice required.
39-71-2308. Collection in case of default.
39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.
39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.
Sections 39-71-2311 through 39-71-2320 reserved.
39-71-2321. What to be deposited in industrial insurance account.
39-71-2322. Money in industrial insurance account held in trust — disposition of funds upon repeal of chapter.
39-71-2323. Surplus in industrial insurance account — payment of dividends.
39-71-2324. Investment of reserve — payment of installments.
39-71-2325. Division to keep accounts of segregations.
39-71-2326. Disbursements out of industrial accident account — employer to pay warrant if funds insufficient.
39-71-2327. Earnings of industrial insurance account to be credited to account — improper use a felony.

Parts 24 through 28 reserved

Part 29 — Workers' Compensation Judge

39-71-2901. Location of office.
39-71-2902. Operating expenses.
39-71-2903. Administrative procedure act applicable — judge not bound by rules of evidence.
39-71-2904. Direct appeal to supreme court.
39-71-2905. Petition to workers' compensation judge.
39-71-2906. Nominal disability awards.
39-71-2907. Increase in award for unreasonable delay or refusal to pay.
39-71-2908. Review of orders allowing compromise settlements of claims.
39-71-2909. Authority to review, diminish, or increase awards — limitation.

Part 1

General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

39-71-104. Court to give liberal construction to chapter. Whenever this chapter or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.

39-71-105 through 39-71-115 reserved.

39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

(4) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market.

(14) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(15) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists

until the injured worker is as far restored as the permanent character of the injuries will permit.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M,. 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53, Ch. 397, L. 1979.

39-71-117. Employer defined. "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part).

39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by

39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-302 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college; or

(d) students enrolled and in attendance in programs of vocational technical education approved by the state board of public education at designated postsecondary vocational technical centers.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be $900 per month.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411.

39-71-119. Injury or injured defined. "Injury" or "injured" means:

(1) a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result therefrom and excluding disease not traceable to injury, except as provided in subsection (2) of this section;

(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid firefighter employed by a municipality, village, or fire district as a regular member of a lawfully established fire department, which diseases are caused by overexertion in times of stress or danger in the course of his employment by proximate exposure or by cumulative exposure over a period of 4 years or more to heat, smoke, chemical fumes, or other toxic gases.

Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary, or respiratory disease while in the course and scope of his employment.

(3) death resulting from injury.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M. 1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1.

39-71-120. Independent contractor defined. An "independent contractor" is one who renders service in the course of an occupation and:

(1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(2) is engaged in an independently established trade, occupation, profession, or business.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1.

Part 2

Administrative Provisions
Division of Workers' Compensation

39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this chapter,

including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall be made after being approved by the division upon claim therefor.

History: **En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979.**

39-71-202. Office of division. The division shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: **En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111.**

39-71-203. Powers of division. The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: **En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814.**

39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — limitation — effect. (1) Except as provided in subsection (2), the division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) The division or the workers' compensation judge shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years after the same has been approved by the division. Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation judge has jurisdiction to make a determination. Except as provided in 39-71-2908, the division or the workers' compensation judge shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards.

History: **En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979.**

39-71-205. Division authorized to charge certain fees — disposition of. (1) The division shall have power and authority to charge and collect the following fees:

(a) for copies of papers and records not required to be certified or otherwise authenticated by the division, 15 cents for each folio;

(b) for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, 20 cents for each folio.

(2) The division shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the earmarked revenue fund and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119.

39-71-206. Legal advisers of division. (1) The attorney general shall be the legal adviser of the division and shall represent it in all proceedings whenever so requested by the division or any member thereof.

(2) The division may, in the investigation and defense of cases under plan No. 3 of the Workers' Compensation Act, employ such other attorney or legal adviser as it deems necessary and pay for the same out of the industrial insurance account in the agency fund.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120.

39-71-207. Merit system. Employees of the division, except the administrator, are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121.

39-71-208. Blank forms, minutes, and records. The division shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the division and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the division.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979.

39-71-209. Publication of reports and bulletins authorized. The division shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its report required by 2-7-102, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118.

39-71-210. Annual report of division — copies for general distribution. The division shall, after the end of each fiscal year, make a report to the governor covering its entire operations and proceedings for the fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of the report shall be printed for general distribution.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979.

39-71-211 through 39-71-220 reserved.

39-71-221. Public records of division — right to inspect. Each person has a right to inspect any public record of the division, except as otherwise expressly provided by law. For the purposes of 39-71-221 through 39-71-224, "public record" means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

History: **En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844.**

39-71-222. Duties of administrator regarding inspection and examination of records. The administrator of the division shall furnish proper and reasonable opportunities for inspection and examination of the records under his control and reasonable facilities for making memoranda or abstracts therefrom during the usual business hours to all persons having occasion to examine them. The administrator may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of his duties.

History: **En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845.**

39-71-223. Certified copies of public records — fees. (1) The administrator of the division shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The administrator of the division may establish fees reasonably calculated to reimburse the division for its actual cost in making such records available.

History: **En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846.**

39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the division contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the administrator of the division shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: **En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847.**

Part 3

Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence. (1) Copies of official documents and orders filed or deposited according to law in the office of the division, certified to by a member of the division or by the secretary under the official seal of the division to be true copies of the original, shall be evidence in like manner as the originals.

(2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the division, or by the secretary under the official seal of the division, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818.

39-71-302. What included in computing payroll. In computing the payroll, the entire compensation received by every worker employed under this chapter is included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979.

39-71-303. Work paid for in property other than money — wages to be determined by division. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the division in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part).

39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal. The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 103 and Ch. 397, L. 1979, and a composite was prepared by the Code Commissioner, 1979. Ch. 397 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently a conflict of language between Ch. 103 and Ch. 641 has been resolved in favor of the language used in Ch. 103.

39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.

39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979.

39-71-307. Employers and insurers to file reports of accidents. (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

History: (1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23, L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010.

39-71-308. Neglect or refusal of public corporation to file monthly payroll reports — arbitrary assessment by division. Whenever any public corporation neglects or refuses to file with the division monthly payroll report of its employees, the division may levy an arbitrary assessment upon such public corporation in an amount of $25 for each such assessment, which assessments shall be collected in the manner provided in this chapter for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and may not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

Part 4

Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979.

39-71-402. Extraterritorial application and reciprocity. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5).

39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations. (1) Where a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency shall be considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay such sums into the accident or administration fund, as the case may be, at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state insurance fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (2) not needed to meet immediate expenditures must be invested by the governing body of the

public corporation, and all proceeds of the investment shall be credited to the fund.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979.

39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.

39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902, 2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; (4)En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; Sec. 92-607, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606, 92-607(part); amd. Sec. 4, Ch. 103, L. 1979.

39-71-406. Deduction from wages of any part of premium a misdemeanor — hospital contributions not prohibited. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979.

39-71-407. Liability of insurers. Every insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1).

39-71-408. Liability as first lien in case of bankruptcy or failure. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

39-71-409. Waivers by employee invalid. No agreement by an employee to waive any rights under this chapter for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803.

39-71-410. Employees bound by plan adopted by employer — election not to be bound by corporate officers. (1) Every employee whose employer is bound by the provisions of this chapter is subject to and bound by the provisions of that plan of compensation adopted by his employer, except that pursuant to such rules as the division shall from time to time promulgate and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under this chapter by a written notice in the form provided by the division, served in the following manner:

(a) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer;

(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering the notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering the notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under this chapter does not entitle such officer to elect not to be bound as an employee under this chapter. In any case, the notice must be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any election by officers of private corporations not to be bound as an employee to assure compliance with this chapter.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency.

History: **En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979.**

39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever such event occurs to an employee while performing the duties of his employment and such event is caused by the act or omission of some persons or corporations other than his employer or the servants or employees of his employer, the employee or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this chapter, have a right to prosecute any cause of action he may have for damages against such persons or corporations.

History: **En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).**

39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action. If an employee receives an injury while performing the duties of his employment and the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then the employee or in case of his death his heirs or personal representatives shall, in addition to the right to receive compensation under the Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against the servants or employees of his employer causing the injury.

History: **En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).**

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

History: **En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2.**

Part 5

Uninsured Employers

39-71-501. Definition of uninsured employer. For the purposes of this part, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979.**

39-71-502. Creation and purpose of uninsured employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part).**

39-71-503. Administration of fund. (1) The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part).

39-71-504. Funding of fund. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection may not exceed $30,000.

(3) The division may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979.

39-71-505. Applicability of other provisions of chapter to fund. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).

39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under 39-71-504.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979.

39-71-507. Division to order uninsured employer to cease operations — noncompliance with order a misdemeanor. When the division discovers an uninsured employer, it shall order him to cease operations until he has elected to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6).

39-71-508. Election of uninsured employee to take under the fund or bring action against employer — election binding. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may elect to either receive benefits from the uninsured employers' fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part).

39-71-509. Election to bring action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part).

39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979.

Part 6

Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver. (1) In case of personal injury or death, all claims shall be forever barred unless presented in writing to the employer, the insurer, or the division, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

(2) The division may, upon a reasonable showing by the claimant of lack of knowledge of disability, waive the time requirement up to an additional 24 months.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

39-71-603. Notice of injuries other than death to be submitted within sixty days. No claim to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may be considered compensable unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury is equivalent to notice.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979.

39-71-604. Application for compensation. (1) Where a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the

attending physician, if any, and such other proof as may be required by the division.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3007, R.C.M. 1921; re-en. Sec. 3007, R.C.M. 1935; amd. Sec. 171, Ch. 147, L. 1963; amd. Sec. 79, Ch. 23, L. 1975; Sec. 92-1119, R.C.M. 1947; (3)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1119, 92-1120; amd. Sec. 7, Ch. 103, L. 1979.

39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the division or any member or examiner or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the division who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of his injury or disability, if any, the division, at the request of the claimant, employer, or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician making the examination shall file a written report of his findings with the division for its use in the determination of the controversy involved. The division shall pay the physician for the examination and shall be reimbursed by the party who requested it.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1.

39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial. Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the division in writing of such denial.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part).

39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information. Under rules adopted by the division and in the discretion of the division, an insurer may suspend compensation payments for not more than 30 days pending the receipt of medical information.

History: **En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part).**

39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice. An insurer may, after written notice to the claimant and the division, make payment of compensation benefits within 30 days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.

History: **En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part).**

39-71-609. Denial of claim after payments made or termination of benefits by insurer — fourteen days' notice required. If an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

History: **En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979.**

39-71-610. Termination of benefits by insurer — division order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the division may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of a hearing. If after a hearing it is held that the insurer was not liable for the compensation payments ordered by the division, the insurer has the right to be reimbursed for such payments by the claimant.

History: **En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617.**

39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. In the event an insurer denies liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the workers' compensation judge.

History: **En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979.**

39-71-612. Costs and attorneys' fees payable based on difference between amount paid by insurer and amount later found compensable. (1) If an employer or insurer pays or tenders payment of compensation under chapter 71 or 72 of this title, but controversy relates to the amount of compensation due and the settlement or award is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the division or the workers' compensation judge if the case has gone to a hearing, based solely upon the difference between the amount settled for or awarded and the amount tendered or paid, may be awarded in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the division or the workers' compensation judge.

History: **En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618.**

39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the division a contract of employment stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

History: **En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619.**

Part 7

Compensation and Benefits Generally

39-71-701. Compensation for injuries producing temporary total disability. (1) Weekly compensation benefits for injury producing total temporary disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed $110 beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total temporary disability benefits shall be paid for the duration of the worker's temporary disability.

(2) In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week.

History: **En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1.**

39-71-702. Compensation for injuries producing total permanent disability. (1) Weekly compensation benefits for injury producing total permanent disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

(2) In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1.

39-71-703. Compensation for injuries causing partial disability. (1) Weekly compensation benefits for injury producing partial disability shall be 66 ⅔% of the actual diminution in the worker's earning capacity measured in dollars, subject to a maximum weekly compensation of one-half the state's average weekly wage.

(2) The compensation shall be paid during the period of disability, not exceeding, however, 500 weeks in cases of partial disability. However, compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in 39-71-705 for the loss of the member.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1.

39-71-704. Payment of medical, hospital, and related services. In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(1) After the happening of the injury, the employer or insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(2) The employer or insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1).

39-71-705. Compensation for loss of certain body members or loss of hearing. (1) In addition to temporary total disability benefits allowed in this chapter, indemnity benefits for loss of a member shall be paid at the weekly rate provided in 39-71-703 and shall be paid for the following periods:

one arm at or near shoulder	280 weeks
one arm at the elbow	240 weeks
one arm between wrist and elbow	220 weeks
one hand	200 weeks
one thumb and the metacarpal bone thereof	75 weeks

one thumb at the proximal joint	37 weeks
one thumb at the second distal joint	25 weeks
one first finger and the metacarpal bone thereof	40 weeks
one first finger at the proximal joint	30 weeks
one first finger at the second joint	22 weeks
one first finger at the distal joint	15 weeks
one second finger and the metacarpal bone thereof	37 weeks
one second finger at the proximal joint	20 weeks
one second finger at the second joint	15 weeks
one second finger at the distal joint	8 weeks
one third finger and the metacarpal bone thereof	25 weeks
one third finger at the proximal joint	15 weeks
one third finger at the second joint	10 weeks
one third finger at the distal joint	5 weeks
one fourth finger and the metacarpal bone thereof	15 weeks
one fourth finger at the proximal joint	11 weeks
one fourth finger at the second joint	8 weeks
one fourth finger at the distal joint	6 weeks
one leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
one leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
one leg between knee and ankle	190 weeks
one foot at the ankle	180 weeks
one great toe with the metatarsal bone thereof	37 weeks
one great toe at the proximal joint	18 weeks
one great toe at the second joint	12 weeks
one toe other than the great toe with the metatarsal bone thereof	16 weeks
one toe other than the great toe at the proximal joint	8 weeks
one toe other than the great toe at second or distal joint	5 weeks
one eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

(2) The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof in one accident, in the absence of conclusive proof to the contrary, shall constitute total disability, permanent in character. However, the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby.

(3) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149,

L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-706. Compensation for permanent injury to a member less than loss. (1) In all cases of permanent injury to a member less than loss of the member, compensation shall be paid for total temporary disability without limitation as to time under 39-71-701. In addition thereto, indemnity benefits for permanent disability to a member or members shall be proportionate to loss or loss of use of the member or members at the weekly rate provided in 39-71-703. In all other cases of permanent injury less than total not included in the schedule provided for in 39-71-705, the compensation for partial disability shall bear such relation to the periods stated in the schedule provided for in 39-71-705 as the disabilities bear to those produced by the injuries named in the schedule or to partial disability (500 weeks).

(2) Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

(3) For the purpose of this section and 39-71-705, the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of this section and 39-71-705, the complete paralysis of both arms, both hands, both feet, both legs, or any two of them shall be considered the loss of such members.

(4) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

39-71-707. Compensation for loss of vision. (1) In addition to temporary total disability benefits allowed in this chapter, indemnity benefits for loss of vision, where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, shall be paid the same as for loss of the eye.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-708. Compensation for disfigurement. (1) The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed $2,500, in addition to any other indemnity benefits payable under 39-71-705, 39-71-706, or 39-71-707.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-709. Partial disability benefits — indemnity benefits — election. (1) In addition to temporary total disability benefits allowed in this chapter, a worker whose injury results in partial disability is entitled to receive compensation under 39-71-703 or indemnity benefits under 39-71-705 through 39-71-708.

(2) A worker who has elected to proceed under 39-71-705 through 39-71-708 may withdraw his election at any time and shall be entitled to compensation under 39-71-703 during the remaining period of his disability; provided, however, that he shall not be entitled to receive benefits under both 39-71-703 and 39-71-705 through 39-71-708 during any month.

(3) A worker who has elected to proceed under 39-71-703 may withdraw his election at any time and is entitled to receive indemnity benefits under 39-71-705 through 39-71-708; provided, however, that he shall not be entitled to a greater benefit, including compensation paid under 39-71-703, than he would have received if he had proceeded exclusively under 39-71-705 through 39-71-708 and provided further that he shall not be entitled to receive benefits under both 39-71-703 and 39-71-705 through 39-71-708 during any month.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.

39-71-710 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, is entitled to the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit is paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for injury causing death are computed at 66 ⅔% of the decedent's wages. The maximum weekly compensation benefits may not exceed the state's average weekly wage. The minimum weekly compensation for death is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 ⅔% of the decedent's

wages. The maximum weekly compensation may not exceed the state's average weekly wage.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a widow or widower for life or until remarriage, and in the event of remarriage, 2 years' benefits must be paid in a lump sum to the widow or widower.

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2).

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979.

39-71-722. Who constitutes beneficiary to be determined as of date of accident. The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the division.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part).

39-71-724. Payment of compensation to beneficiary not a resident of United States. (1) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this chapter shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the division. Such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary or consul or consular

agent within the United States representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary or consul or consular agent shall acquit the employer, the insurer, or the division, as the case may be.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507.

39-71-725. Payment of burial expense. There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding $1,100, and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705.

39-71-726. No compensation after death where death not result of injury. If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2).

39-71-727 through 39-71-735 reserved.

39-71-736. Compensation — from what date paid. No compensation may be paid for the first 5 days loss of wages due to an injury. If loss of wages continues for more than 5 days, compensation shall be paid from the date of injury. However, separate benefits of medical and hospital services shall be furnished from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979.

39-71-737. Compensation to run consecutively. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part).

39-71-738. Adjustment of compensation in case of further injuries. Should a further accident occur to a worker who is already receiving compensation hereunder or who has been previously the recipient of a payment under this chapter, his further compensation is adjusted according to the other provisions of this chapter and with regard to his past receipt of compensation.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.

39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments — how made in most cases. All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Compromise settlements and lump-sum payments — division approval required. The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Such conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and shall rest in the discretion of the division, both as to the amount of such lump-sum payment and the advisability of such conversion. The division is hereby vested with full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim. A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979.

39-71-742. Who may receive payment. (1) Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or division, as the case may be, of further liability.

(2) In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch, 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508.

39-71-743. Assignment or attachment of payments. No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801.

Part 8

Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this chapter, compensation is awarded for occupational deafness as provided in this part.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.

39-71-802. Definitions. (1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

(2) "Noise" means sound capable of producing occupational deafness.

(3) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).

39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule provided for in 39-71-705.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8).

39-71-804. Compensable loss of hearing confined to certain frequencies. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000, and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second is not to be considered as constituting disability for hearing.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).

39-71-805. Determining percent of hearing loss. (1) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels, an allowance of 1 ½% shall be made up to the maximum of 100%, which is reached at 92 decibels.

(3) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six. The final percentage shall be representative of the binaural hearing impairment.

(4) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss one-half decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

(5) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f).

39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise. No benefits shall be payable for temporary total or temporary partial disability under this part for loss of hearing due to prolonged exposure to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case is the date of wage loss.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

39-71-808. Compensation for occupational deafness. (1) Subject to the limitations herein contained, there shall be payable:

(a) for total occupational deafness of one ear, 40 weeks of compensation;

(b) for total occupational deafness of both ears, 200 weeks of compensation; and

(c) for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

(2) In cases covered by this section, "time of injury", "incurred such injury", or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) retirement;

(c) termination of the employer-employee relationship;

(d) layoff provided the layoff is complete and continuous for 1 year.

(3) No claim under this section shall be filed, however, until 6 consecutive months of removal from noisy employment after the time of injury, except,

that under subsection (2)(d), such 6 consecutive months period may commence within the last 6 months of layoff.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).**

39-71-809. Liability of employer for occupational deafness. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the 6 months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).**

39-71-810. Employee to have worked ninety days for employer from whom compensation claimed. No payment shall be made to an employee under this part unless he shall have worked in noisy employment for a total period of at least 90 days for the employer from whom he claims compensation.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).**

39-71-811. Minimum exposure and noise intensity level required. No claim shall be filed, however, unless the employee is exposed 8 hours daily and for a period of at least 90 days as above required to noise intensity levels above 90 decibels.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).**

39-71-812. Limitation on amount of compensation payable to employee under part. Any amount paid to an employee under this part by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under 39-71-807 and 39-71-808. No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this part for total occupational deafness.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).**

39-71-813. Limitation provisions applicable — when provisions begin to run. The limitation provisions in this chapter control claims arising under this part. Such provisions run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim may accrue to any dependent unless an award has been issued or liability admitted.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.**

Part 9

Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the division of workers' compensation to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979.**

39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in the judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979.**

39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided herein.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979.**

39-71-904. Rules for certification. The administrator of the division shall promulgate rules for certification of vocationally handicapped persons.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4).**

39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part may apply to the division on forms furnished by the division. The division shall conduct an investigation and shall issue a certificate to a person who, in the division's discretion, meets the requirements for vocationally handicapped certification. An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979.**

39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with division — effect of

failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the division, on forms furnished by the division, all pertinent information requested by the division. The division shall acknowledge receipt of the information. Failure to file the required information with the division within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979.**

39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — employer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care, and burial as provided in this chapter is limited to those benefits occurring during the period of 104 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979.**

39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the employer, carrier, or industrial insurance fund has regarding the accident and the nature and extent of the injury and disability.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979.**

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized. If the fund does not notify the carrier of its intent to dispute the payment of compensation, medical, and burial benefits, the employer, carrier, or industrial insurance fund shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid that pertain to the period beyond 104 weeks after the date of the injury. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the carrier of a dispute as to payment of benefits. The liability of the fund to reimburse the employer, carrier, or the industrial insurance fund shall be suspended 30 days thereafter until the controversy is determined.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7).**

39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name of the employee and the employer and the date of the alleged injury or disability. The fund named as a defendant shall have 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979.

39-71-911. Obligation to make payments on behalf of fund not an independent liability. The obligation imposed by this part on the employer, carrier, or industrial insurance fund to make payments on behalf of the fund does not impose an independent liability on the employer, carrier, or industrial insurance fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-912. Reimbursement to be promptly made. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-913. Payments by fund directly to persons entitled. If the employer, carrier, or the industrial insurance fund does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-914. Conversion of benefits payable from fund to lump sum. Benefits payable from the fund may be converted into a lump-sum payment only upon a substantial showing for an equitable cause, the advisability of the lump-sum payment to be determined and approved by the administrator of the division.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

Part 10

Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation. The division shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act and who, in the opinion of the division, can be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the provisions of Title 53, chapter 7, parts 1 and 2.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.

39-71-1002. Certification of department's determination to division — review of award. When the department of social and rehabilitation services has provided all feasible vocational rehabilitation to an injured worker or has determined that vocational rehabilitation is not possible or feasible, it shall certify its determination to the division, at which time the division shall reconsider and review any previous award of compensation to the injured worker which is then in effect.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.

39-71-1003. Eligibility for benefits under chapter not affected — other expenses payable. The eligibility of any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979.

39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 shall be made from the industrial accident rehabilitation account in the agency fund. Payments to the account shall be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the division, an amount to be determined by the division, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance account in the agency fund and the occupational disease account in the agency fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the agency fund shall be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the division, which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the division or department of social and rehabilitation services.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406.

39-71-1005. Required rehabilitation. (1) The division may, under the provisions and procedures set forth in this section, require a claimant to pursue a vocational rehabilitation course in order to be entitled to continued workers' compensation benefits.

(2) The division shall make a determination, on a case-by-case basis, of the availability and appropriateness of a rehabilitation program for a claimant receiving workers' compensation benefits. The determination shall be made only after consultation with the department of social and rehabilitation services and division-sanctioned rehabilitation committees that are able to provide competent information regarding the rehabilitation of a claimant.

(3) If the division determines that a rehabilitation program is feasible and appropriate for a claimant receiving workers' compensation benefits, the division must require the claimant to enter into the program. If a claimant refuses to enter the program, the claimant's biweekly benefits may be ordered terminated.

(4) Any order terminating benefits may only be issued after the claimant has an opportunity for a hearing before a workers' compensation judge regarding the feasibility and appropriateness of the rehabilitation program. After the hearing, the judge may approve or deny the division's determination regarding the feasibility or appropriateness of the proposed rehabilitation program.

(5) If a claimant does not request a hearing and benefits are terminated, and subsequently the claimant requests a hearing, the claimant is entitled to retroactive weekly benefits for a maximum of 8 weeks from the date of request for hearing, and to continued weekly benefits pending a decision by the workers' compensation judge.

History: En. Sec. 1, Ch. 123, L. 1979.

Parts 11 through 20 reserved

Part 21

Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the division of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective and may, by order of the division, make such payments directly to his employees as they may become entitled to receive under the terms and conditions of this chapter.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979.

39-71-2102. Proof of solvency to be filed. Every employer who has elected to be bound by compensation plan No. 1 shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the division.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902.

39-71-2103. Employer permitted to carry on business and settle directly with employee. If such employer making such election shall be found by the division to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the division shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part).

39-71-2104. Renewal of application. Every employer, so long as he continues in his employment and so long as he continues to be bound by compensation plan No. 1, shall, at least 30 days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the division may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part).

39-71-2105. Additional proof of solvency — revocation of order. The division may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this chapter and may at any time, upon notice to such employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904.

39-71-2106. Requiring security of employer. (1) If the division finds that an employer does not have the financial responsibility for the payment of the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission, the division must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as the division finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(2) The security must be deposited with the division and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the division in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations which the division deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(3) The division is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation. Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the division for the protection and guaranty of the payment of such liability in such sum as the division may direct. However, if sufficient securities are already on deposit with the division or if the division determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907.

39-71-2108. Failure of employer to pay compensation — duty of division. Upon the failure of the employer to pay any compensation provided for in this chapter upon the terms and in the amounts and at the times when the same becomes due and payable, the division shall, upon demand of the person to whom compensation is due, apply any deposits made with the division to the payment of the same, and the division shall take the proper steps to convert any securities on deposit with the division or sufficient thereof into cash and to pay the same upon the liabilities of the employer accruing under the terms of this chapter, and the division shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to insure the payment of his liability. To these ends and for these purposes, the division shall be deemed to be the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906.

39-71-2109. When employer may be relieved from liability. Any employer against whom liability may exist for compensation under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at 5% per annum, with the division; or

(2) purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the division.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908.

Part 22

Compensation Plan Number Two

39-71-2201. Election to be bound by plan. (1) Any employer except those specified in 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M. 1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979.

39-71-2202. Policies made subject to chapter. Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959;

amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.

39-71-2203. Content of policies — policies subject to approval, change, or revision by division. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

(2) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this chapter provided for and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or by this chapter or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable.

(4) Every such policy shall at all times be subject to approval, change, or revision by the division and shall contain the clauses, agreements, and promises required by this chapter.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011.

39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the division.

(2) The division may, in its discretion, assess a penalty of no more than $200 against an insurer which as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (1) of this section.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part).

39-71-2205. Policy remains in effect until canceled or replaced — twenty-day notification of cancellation required. The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part).

39-71-2206. Deposits by insurer with division to guarantee payment of liability. (1) Before issuance of any policy by an insurer as herein authorized, the insurer must deposit with the division bonds of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than $5,000 or more than $100,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof is determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining must be returned to the depositor. All earnings made by such deposit must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings must upon demand be delivered to such depositor. The division and its bondsmen are liable for the value and safekeeping of such deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979.

39-71-2207. How insurer relieved from liability. Any insurer against whom liability may exist for compensation under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at 5% per annum, with the division; or

(2) purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the division.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008.

Part 23

Compensation Plan Number Three

39-71-2301. Intent and purpose of plan. It is the intent and purpose of compensation plan No. 3 to allow an employer to insure with a state operated workers' compensation insurance system, known as the state compensation insurance fund or state fund. The state fund shall be administered by the division of workers' compensation and shall pay all benefits under this chapter to the employees of an employer who elects coverage with the state fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

39-71-2302. General requirements for electing coverage under plan. Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the division pay to the division a premium based on a percentage of his payroll as determined by the division, which shall be a member of a rating organization in accordance with the provisions of this chapter.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101.

39-71-2303. Manner of electing — contract or policy of insurance — payment of premium. The division shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election, and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the division a contract or policy of insurance in a form approved by the division. The premium thereon shall be paid by the employer to the division at such times as the division shall prescribe and shall be paid over by the division to the state treasurer to the credit of the industrial insurance account in the agency fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947, 92-1103.

39-71-2304. Determination of rates and classifications by division. (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience and as a member of a rating organization as is otherwise provided for in this chapter may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the division, as a member of a rating organization, into classes, whose rates may be readjusted at such times as the division as a member of such rating organization may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance account shall be one and indivisible.

(3) The division as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it as a member of such rating organization.

(4) In addition, compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance account allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division as a member of such rating organization. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4).

39-71-2305. Advanced rate for dangerous places of employment. If, by reason of poor or careless management or otherwise, any place of employment is unduly dangerous in comparison with other like places of employment and the employer operating the same has not complied with the safety provisions of the Montana Safety Act and the employer is under compensation plan No. 3, the division, in addition to any other penalty provided, shall advance the rate upon such place of employment 50%. The advanced rate shall continue and be in force until the place of employment has ceased to be unduly dangerous in comparison with other like places of employment and the employer has obtained a certificate of the division.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1.

39-71-2306. State fund authorized to charge interest. The state fund may charge interest on any balance that is due and owing the state fund by an employer who has misrepresented the employer's payroll, improperly classified the employer's payroll, or defaulted in premium payments. The interest rate charged shall be set by the state fund at a reasonable rate. In determining what is a reasonable rate, the state fund shall review appropriate interest rates charged by financial institutions in this state.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

39-71-2307. Cancellation of coverage under plan for default — thirty days' notice required. The division is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due. When the division makes an order canceling an employer's right for failure to pay premiums, the division shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer shall have the same status as an employer who is not enrolled under the Workers' Compensation Act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part).

39-71-2308. Collection in case of default. (1) If any employer under plan No. 3 shall default in any payment to the division, the sum due may be collected by an action at law in the name of the state, and such right of action shall be cumulative.

(2) When an employer's right to operate has been canceled by the division for failure to pay premiums and when the division in its discretion finds that the property and assets of the employer are not sufficient to pay the premiums, the division may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part).

39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.

39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.

39-71-2311 through 39-71-2320 reserved.

39-71-2321. What to be deposited in industrial insurance account. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance account in the agency fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2).

39-71-2322. Money in industrial insurance account held in trust — disposition of funds upon repeal of chapter. The moneys coming into the industrial insurance account in the agency fund shall be held in trust for the purpose for which such moneys were collected, and if this chapter shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this chapter. In default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840.

39-71-2323. Surplus in industrial insurance account — payment of dividends. If at the end of any fiscal year there exists in the industrial insurance account in the agency fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the division may declare a dividend in such manner as the rules of the division may prescribe to those employers who have paid premiums into the industrial insurance account in the agency fund in excess of liabilities chargeable to them in the account in the agency fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the division shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110.

39-71-2324. Investment of reserve — payment of installments. The division shall turn over the reserve to the board of investments to be invested, and the same shall be invested by the board of investments as part of the long-term investment fund and out of the same and its earnings shall be paid the monthly installments and any lump sum then or thereafter arranged for. However, when there is sufficient money in the industrial insurance account in the agency fund to meet such compensation payments, any surplus remaining may be invested as specified in this section.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112.

39-71-2325. Division to keep accounts of segregations. The division shall keep an accurate account of all such segregations of the industrial insurance account in the agency fund and shall divert from the account any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113.

39-71-2326. Disbursements out of industrial accident account — employer to pay warrant if funds insufficient. Disbursements out of the industrial insurance account in the agency fund shall be made by the division. If at any time there is not sufficient money in the account with which to pay any warrants drawn thereon, the employer on account of whose workers the warrant was drawn shall pay the same, and upon his next contribution to the account, he shall be credited with the amount so paid, with interest thereon at the rate of 6% per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such account for the excess; and if the warrant is not paid for want of funds, it shall be credited to the employer and be applied upon succeeding assessments.

History: **En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122.**

39-71-2327. Earnings of industrial insurance account to be credited to account — improper use a felony. All earnings made by the industrial insurance account in the agency fund by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of the account, and the making of profit, either directly or indirectly, by any person out of the use of the account shall constitute a felony and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding 2 years or a fine not exceeding $5,000 or both such fine and imprisonment.

History: **En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123.**

Parts 24 through 28 reserved

Part 29

Workers' Compensation Judge

39-71-2901. Location of office. The principal office of the workers' compensation judge shall be in the city of Helena.

History: **En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850.**

39-71-2902. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund.

History: **En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.**

39-71-2903. Administrative procedure act applicable — judge not bound by rules of evidence. All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

History: **En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1).**

39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. The workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under chapter 71.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979.

39-71-2906. Nominal disability awards. The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment but no disability has resulted therefrom.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).

39-71-2907. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused by an insurer, either prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant, between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits, may be increased by the workers' compensation judge by 20%. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

History: En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979.

39-71-2908. Review of orders allowing compromise settlements of claims. All orders allowing full and final compromise settlements of workers' compensation claims shall be immediately referred to the workers' compensation judge, and the judge may, within 10 days of the judge's receipt of an order, disapprove an order allowing a full and final compromise settlement.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).

39-71-2909. Authority to review, diminish, or increase awards — limitation. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge or benefits received by a claimant through settlement agreements. However, the judge may not change any final settlement or award of compensation more than 4 years after the settlement has been approved by the division or any order approving a full and final compromise settlement of compensation.

History: **En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979.**

CHAPTER 72

OCCUPATIONAL DISEASE ACT OF MONTANA

Part 1 — General Provisions

Section
39-72-101. Short title.
39-72-102. Definitions.
39-72-103. No vested right to compensation.
39-72-104. Chapter to be liberally construed.

Part 2 — Administrative Provisions

39-72-201. Administration of chapter.
39-72-202. Powers of division.
39-72-203. Division to adopt rules.
39-72-204. Claim forms to be prescribed by division.
39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.
39-72-206. Legal action by division.

Part 3 — Coverage and Liability

39-72-301. Who subject to chapter.
39-72-302. Employer liability.
39-72-303. Which employer liable.
39-72-304. Physical examination of applicant for employment — no liability for occupational diseases found — procedure and requirements — rules.
39-72-305. Right to compensation exclusive remedy — uninsured employers.
39-72-306 through 39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.
39-72-310. Occupational disease coverage under workers' compensation plans.

Part 4 — Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter.
39-72-402. Practice and procedure — applicability of Workers' Compensation Act.
39-72-403. Time when claims must be presented.
39-72-404. False representation by employee concerning previous occupational disease.
39-72-405. General limitations on payment of compensation to disabled employee — exceptions.
39-72-406. General limitations on payment of death benefits — exceptions.
39-72-407. Prima facie evidence of exposure to harmful quantities of silicon dioxide dust.
39-72-408. Proximate causation.

Part 5 — Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed. Sec.19, Ch. 104, L. 1979.
39-72-509. Benefits for pneumoconiosis.

Part 6 — Medical Examinations Determining Compensability of Claims

39-72-601. Medical panel.
39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability.
39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.
39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.
39-72-605. When occupational disease causes death.
39-72-606. Autopsy.
39-72-607. Periodic medical examinations.
39-72-608. Payment of medical examination and autopsy expenses.
39-72-609. Report of medical panel prima facie evidence.
39-72-610. Report of and examinations conducted by medical panel.
39-72-611. Hearing on determination — when.
39-72-612. Rehearing and appeal to workers' compensation judge.
39-72-613. Costs and attorney fees.

Part 7 — Compensation and Benefits

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis.
39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.
39-72-703. No compensation for partial disability.
39-72-704. Medical and hospital expenses.
39-72-705. Burial expenses.
39-72-706. Aggravation.
39-72-707. Silicosis with complications.
39-72-708. Prohibiting supplementing of benefits.
39-72-709. Diminution of compensation.
39-72-710. Repealed. Sec. 19, Ch. 104, L. 1979.
39-72-711. Lump-sum and compromise settlements.
39-72-712. Methods of deducting attorney's fee from compensation.
39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.
39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment.

Part 1

General Provisions

39-72-101. Short title. This chapter may be cited as the "Occupational Disease Act of Montana".

History: En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; amd. Sec. 84, Ch. 397, L. 1979.

39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the normal labor market. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8).

(10) "Invalid" is as defined in 39-71-116(9).

(11) "Occupational disease" means all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22).

History: (1) thru (10), (12) thru (17)En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977; Sec. 92-1303.1, R.C.M. 1947; (11)En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971; Sec. 92-1304, R.C.M. 1947; R.C.M. 1947, 92-1303.1, 92-1304; amd. Sec. 1, Ch. 104, L. 1979; amd. Sec. 85, Ch. 397, L. 1979.

39-72-103. No vested right to compensation. The right to the compensation provided for herein shall not nor shall the rate or amount thereof be or become vested or continuing rights in persons awarded compensation under this chapter or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this chapter or any amendment hereof or to wholly discontinue to all persons all compensation provided for by this chapter or any amendment hereof.

History: En. Sec. 67, Ch. 155, L. 1959; R.C.M. 1947, 92-1367.

39-72-104. Chapter to be liberally construed. Whenever this chapter or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 68, Ch. 155, L. 1959; R.C.M. 1947, 92-1368.

Part 2

Administrative Provisions

39-72-201. Administration of chapter. This chapter shall be administered by the division of workers' compensation.

History: En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975; R.C.M. 1947, 92-1302.

39-72-202. Powers of division. The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977; R.C.M. 1947, 92-1352.

39-72-203. Division to adopt rules. Subject to the provisions of this chapter, the division shall adopt and publish rules governing procedure before it and shall prescribe forms of notice and manner of serving the same in all claims for compensation and may change the same from time to time at its discretion.

History: En. Sec. 45, Ch. 155, L. 1959; R.C.M. 1947, 92-1345.

39-72-204. Claim forms to be prescribed by division. Claims for compensation under this chapter shall be filed on forms prescribed and provided for by the division and shall be filed in the same manner as claims for compensation under the Workers' Compensation Act unless otherwise provided in this chapter.

History: En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977; R.C.M. 1947, 92-1346.

39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.

39-72-206. Legal action by division. Upon request of the division, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this chapter or for any penalty provided for in this chapter. The attorney general shall prosecute or defend all actions brought by or against the division in its official capacity. The division may compromise any action brought under this chapter.

History: En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977; R.C.M. 1947, 92-1343.

Part 3

Coverage and Liability

39-72-301. Who subject to chapter. This chapter shall apply to and only to all employers and employees who now are or hereafter will be subject to the provisions of the Workers' Compensation Act of the state of Montana.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part).

39-72-302. Employer liability. There is imposed on every employer subject to this chapter a liability for the payment of compensation as herein provided.

History: En. Sec. 66, Ch. 155, L. 1959; R.C.M. 1947, 92-1366.

39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease, but in the case of silicosis, the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust for a period of 90 actual workshifts or more after July 1, 1958.

(2) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, is liable for and must secure the payment of all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine, and the prior operator of such mine shall not be relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971; R.C.M. 1947, 92-1310.

39-72-304. Physical examination of applicant for employment — no liability for occupational diseases found — procedure and requirements — rules. (1) An employer may give, within 2 weeks of the beginning of employment, a physical examination to an applicant for employment. Where an applicant for employment, whether he has been formerly employed by the employer to whom application is made or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, the employer is not liable under this chapter for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of the disease or diseases if a report of the medical examination is approved by the division as provided in this section.

(2) The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the division by the employer within 15 days after the examination. With the medical report and x-rays, if any, there shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(3) The division shall submit the medical report and x-rays, if any, to a physician of its choice, and the physician shall report to the division his finding as to whether the medical report is satisfactory. The division shall, within 20 days after the receipt of the medical report from the employer, enter its order approving or disapproving the report and specifying the particular disease or diseases found. The order shall be in writing stating the reasons for the approval or disapproval. A copy of the order shall be mailed to the employer and the applicant for employment within 24 hours after the division has approved or disapproved the report.

(4) An applicant for employment may commence work prior to the approval or disapproval of the report by the division. However, if the division disapproves the report, the employer may discharge the applicant for employment without liability to him.

(5) If no physical examination is given to the applicant for employment within the 2-week period, the applicant for employment is fully eligible for the benefits under this chapter.

(6) The division may adopt reasonable rules relative to the form, execution, and filing of reports submitted under this section not inconsistent with the provisions of this chapter.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(2) thru (7).

39-72-305. Right to compensation exclusive remedy — uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of employment, whether resulting in death or not, is the exclusive remedy therefor against an employer who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter.

History: En. Sec. 8, Ch. 155, L. 1959; R.C.M. 1947, 92-1308; amd. Sec. 2, Ch. 104, L. 1979.

39-72-306 through 39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.

39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1 (Title 39, chapter 71, part 21), every insurer writing workers' compensation coverage under compensation plan No. 2 (Title 39, chapter 71, part 22), and the state compensation insurance fund under compensation plan No. 3 (Title 39, chapter 71, part 23), all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state compensation insurance fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977; R.C.M. 1947, 92-1334.1.

Part 4

Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter. When he has complied with other provisions of this chapter, compensation shall be paid to a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions set forth in this chapter.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(part).

39-72-402. Practice and procedure — applicability of Workers' Compensation Act. (1) Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act applies to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the Workers' Compensation Act specifically apply to and are incorporated as part of this chapter.

History: **En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part); amd. Sec. 3, Ch. 104, L. 1979.**

39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed.

History: **En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977; R.C.M. 1947, 92-1312.1.**

39-72-404. False representation by employee concerning previous occupational disease. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: **En. Sec. 42, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.**

39-72-405. General limitations on payment of compensation to disabled employee — exceptions. (1) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) Except as provided for in subsection (3) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding $10,000.

History: **En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979.**

39-72-406. General limitations on payment of death benefits — exceptions. Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

(1) Except as provided for in 39-72-405(3), compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases occurred prior to July 1, 1959.

(2) No compensation may be paid for death from silicosis unless during the 8 years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than 1,000 workshifts in employment in this state.

(3) No compensation may be paid for death from silicosis unless the death results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid to the beneficiaries if death results from the silicosis.

(4) No compensation may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid to the beneficiaries if death results from the occupational disease.

History: **En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(2); amd. Sec. 5, Ch. 104, L. 1979.**

39-72-407. Prima facie evidence of exposure to harmful quantities of silicon dioxide dust. Proof of the exposure to silicon dioxide dust for a period of not less than 1,200 workshifts in employment in this state, with proof of total disability from silicosis, is prima facie evidence of exposure to harmful quantities of such dust during all such period.

History: **En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(3).**

39-72-408. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

(1) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) the disease can be fairly traced to the employment as the proximate cause;

(4) the disease does not come from a hazard to which workmen would have been equally exposed outside of the employment;

(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee.

History: **En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971; R.C.M. 1947, 92-1305.**

Part 5

Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed. Sec. 19, Ch. 104, L. 1979.

39-72-509. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

History: **En. Sec. 6, Ch. 104, L. 1979.**

Compiler's Comments

Codification. Sec. 20, Ch. 104, L. 1979, provided: "The code commissioner shall codify section 6 of this act in Title 39, chapter 72, part 5, and section 14 of this act in Title 39, chapter 72, part 6, and the provisions of those parts apply, respectively, to section 6 and section 14."

Part 6

Medical Examinations — Determining Compensability of Claims

39-72-601. Medical panel. (1) The Montana medical association may, at least annually, certify to the division as nominees 10 or more licensed physicians of the state to serve on the medical panel. At least three of the physicians must have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films. At least three of the physicians must have had at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases.

(2) From the list submitted as provided for in this section, the division shall appoint five or more physicians to serve on the medical panel.

(3) If the Montana medical association fails to submit the list of nominees as provided for in this section, the division shall appoint as members of the medical panel five or more licensed physicians in the state. Three of the panel members must have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films.

(4) The panel members shall appoint one member of the panel to be the chairman.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977; R.C.M. 1947, 92-1314; amd. Sec. 7, Ch. 104, L. 1979.

39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The division shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the division shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(1); amd. Sec. 8, Ch. 104, L. 1979.

39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.

39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.

39-72-605. When occupational disease causes death. When an occupational disease is claimed to have caused death and a claim for death benefits is filed therefor, the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the division. The report is prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977; R.C.M. 1947, 92-1317; amd. Sec. 9, Ch. 104, L. 1979.

39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner or a medical examiner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting a report under 39-72-605 before the final report under that section is submitted to the division.

History: En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977; R.C.M. 1947, 92-1318; amd. Sec. 27, Ch. 7, L. 1979; amd. Sec. 10, Ch. 104, L. 1979.

39-72-607. Periodic medical examinations. (1) Upon the request of the division or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the division who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the employee.

(2) The order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition, and his ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation is suspended until the examination has been made, and no compensation is payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(1) thru (4).

39-72-608. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 39-72-602 shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 39-72-607, shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall be borne by the party requesting the autopsy.

History: En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977; R.C.M. 1947, 92-1320; amd. Sec. 11, Ch. 104, L. 1979.

39-72-609. Report of medical panel prima facie evidence. A report submitted to the division by the appropriate medical panel and placed in the division's records is prima facie evidence as to the matters contained in the report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(3).

39-72-610. Report of and examinations conducted by medical panel. (1) At a hearing held before the division or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(5); amd. Sec. 12, Ch. 104, L. 1979.

39-72-611. Hearing on determination — when. Upon the division's own motion or if a claimant or an insurer requests that a hearing be held by the division prior to the time the division issues its final determination concerning the claimant's entitlement to occupational disease benefits, the division shall hold a hearing.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(4).

39-72-612. Rehearing and appeal to workers' compensation judge. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination may not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: (1)En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; Sec. 92-1314.1, R.C.M. 1947; (2)En. Sec. 35, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977; Sec. 92-1335, R.C.M. 1947; R.C.M. 1947, 92-1314.1(6), 92-1335; amd. Sec. 13, Ch. 104, L. 1979.

39-72-613. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the division and the claim is determined compensable by the division after the hearing and the insurer does not appeal the division's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the division, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the division to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the division, the workers' compensation judge, and the supreme court.

History: En. Sec. 14, Ch. 104, L. 1979.

Compiler's Comments

Codification. Sec. 20, Ch. 104, L. 1979, provided: "The code commissioner shall codify section 6 of this act in Title 39, chapter 72, part 5, and section 14 of this act in Title 39, chapter 72, part 6, and the provisions of those parts apply, respectively, to section 6 and section 14."

Part 7

Compensation and Benefits

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 88, Ch. 397, L. 1979.

39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.

39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 is payable to an employee who is partially disabled from an occupational disease.

History: En. Sec. 22, Ch. 155, L. 1959; R.C.M. 1947, 92-1322; amd. Sec. 15, Ch. 104, L. 1979.

39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the division.

History: **En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977; R.C.M. 1947, 92-1325; amd. Sec. 16, Ch. 104, L. 1979.**

39-72-705. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding the maximum amount provided for in 39-71-725.

History: **En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977; R.C.M. 1947, 92-1324.**

39-72-706. Aggravation. Where an occupational disease is aggravated by any other disease or infirmity not itself compensable or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any wise contributed to by an occupational disease, the compensation payable under this chapter shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

History: **En. Sec. 26, Ch. 155, L. 1959; R.C.M. 1947, 92-1326.**

39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced as provided in 39-72-706.

History: **En. Sec. 27, Ch. 155, L. 1959; R.C.M. 1947, 92-1327.**

39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under chapter 73 of this title is entitled to compensation or benefits under this chapter.

History: **En. Sec. 32, Ch. 155, L. 1959; R.C.M. 1947, 92-1332(part); amd. Sec. 90, Ch. 397, L. 1979.**

39-72-709. Diminution of compensation. Compensation payable pursuant to the terms of this chapter to the claimant, his beneficiaries, or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workers' Compensation Act of Montana or any other workers' compensation act.

History: **En. Sec. 33, Ch. 155, L. 1959; R.C.M. 1947, 92-1333.**

39-72-710. Repealed. Sec. 19, Ch.104, L. 1979.

39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405(3), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 17, Ch. 104, L. 1979.

39-72-712. Methods of deducting attorney's fee from compensation. If a claimant has entered into a contract of employment with an attorney for the recovery of benefits under this chapter and the terms of the employment contract are reasonable, the amount of the attorney's fee may be ordered by the division to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant under this chapter. The division may require payments to be deducted each week in an amount it considers advisable from the payments thereafter to be made to the claimant under this chapter and paid to the attorney as they are so deducted from the weekly payments to the claimant.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part).

39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.

39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment. The division may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(5).

CHAPTER 73

SILICOSIS BENEFITS

Part 1 — General Provisions

Section

39-73-101. Definitions.
39-73-102. Administration — duties of division.
39-73-103. Conformity with acts of federal government.
39-73-104. Eligibility requirements for benefits.
39-73-105. Application for payment.
39-73-106. Investigation of applications.
39-73-107. Amount of payments.
39-73-108. Payment of benefits where person entitled is in institution.
39-73-109. Payment of benefits to surviving spouse.
39-73-110. Assistance not assignable or subject to legal process.

Part 1

General Provisions

39-73-101. Definitions. (1) "Payments" means money payments to persons having silicosis as herein defined.

(2) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(3) "Examining board" shall mean well-qualified physician or physicians, as designated by the division of workers' compensation.

(4) The term "gainful occupation", as used herein, shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but shall mean any person having an income from any other source exceeding $150 per month.

History: (1) thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part).

39-73-102. Administration — duties of division. The division of workers' compensation shall administer this chapter. The division shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) publish an annual report and interim reports as may be necessary or required or asked for by the governor;

(4) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(5) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(6) pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the division for that purpose;

(7) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002.

39-73-103. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the division of workers' compensation is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter shall not exceed $175 per month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L.

1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008.

39-73-104. Eligibility requirements for benefits. Payment shall be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which will equal the sum of $175 hereunder.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part).

39-73-105. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the division. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the division. The application form may be filled in and written by a person authorized by the division. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005.

39-73-106. Investigation of applications. (1) Whenever the division under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the division. The investigation of such applicant shall be conducted by representatives of the division. The physicians or physician designated by the division, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

(2) Upon the completion of such investigation, the division shall determine whether or not the applicant is entitled to a payment under this chapter. The division shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007.

39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the division of workers' compensation, been determined by the division to be entitled payment under this chapter for silicosis shall be granted a payment by the division of $175 per month, subject to such appropriations as may from time to time be made. If he is receiving payments under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which are less in the aggregate than $175, then he is entitled to a payment under this chapter of the difference between the amount received under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, and $175 per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004.

39-73-108. Payment of benefits where person entitled is in institution. If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be paid his beneficiary, if any, as defined in 39-71-116(2).

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c).

39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if such spouse's taxable income is $6,800 or more per year.

History: (1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979.

39-73-110. Assistance not assignable or subject to legal process. Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

State Law Library of Montana
3 0000 00239598 0

DOES NOT
CIRCULATE